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REPORT

OF THE

GREAT CONSPIRACY CASE.

THE PEOPLE OF THE STATE OF MICHIGAN,

VERSUS

ABEL F. FITCH AND OTHERS,

COMMONLY CALLED

THE RAIL ROAD CONSPIRATORS:

TRIED BEFORE

HIS HONOR WARNER WING, PRESIDING JUDGE

OF THE

CIRCUIT COURT FOR THE COUNTY OF WAYNE, AT THE MAY TERM, 1851, IN THE CITY OF DETROIT.

CONTAINING

THE EVIDENCE, ARGUMENTS OF COUNSEL, CHARGE OF THE COURT AND THE VERDICT OF THE JURY.

PUBLISHED BY THE

ADVERTISER AND FREE PRESS,

DETROIT.

1851.

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NOTE BY THE PUBLISHERS.

In order to fully understand the nature and character of the following Trial, we have deemed it important that the reader should be placed in possession of a few of the leading incidents which preceded, and finally led to it. In the year 1849, a series of assaults and depredations were committed upon the property and business of the Central Railroad Company, in and about the villages of Leoni and Michigan Centre, in Jackson County. These acts of violence, varied in their character and aggravation, were kept up and continued from time to time, increasing in boldness and frequency, until they formed a serious detriment to the business of the road, injuring not only the Railroad Company, but the public, and putting in constant danger the lives and limbs of thousands of the travelling community. This continued until the autumn of 1850, when the freight depot of the Company in Detroit, together with all its contents, was burned and totally destroyed. The depot was the largest and finest in the country, and the loss in the consumption of the building, and the property contained in it, was estimated to be near one hundred and fifty thousand dollars.

Suspicion rested upon the defendants in this suit, and sufficient testimony having been found against them to justify the issuing of warrants, on the 19th of April last, Sheriff Bald win and possee proceeded to Leoni and Michigan Centre and arrested and made them prisoners.

They were brought to Detroit and imprisoned in Wayne County Jail.

A Grand Jury were called together, and on the 24th day of April, indictments were found against all of them.

On Thursday, the 29th of May, they were arraigned before the Circuit Court of Wayne County, a Jury was empanelled, and the trial commenced.

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In this trial, the community at large have taken a deep interest, and the Publishers have thought, therefore, that a full and complete history of it would not prove unacceptable.

In order to get the volume out in time to satisfy the public demand, great haste and despatch have been necessary. In view of that, the publishers claim the indulgence of the public for the slight errors and imperfections which may appear.

Their sources of information have been of the highest and most authentic character, and they feel assured that the report will be found substantially correct and reliable—the testimony being compiled from the minutes taken during the progress of the trial by WILLIAM S. WOOD, and WILLIAM GRAY, Esqrs., published in the Detroit Daily and Weekly Advertiser, and the Daily and Weekly Free Press.

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RAIL-ROAD CONSPIRACY CASE.

THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
MAY TERM, 1851.

HON. WARNER WING, PRESIDING.

The People of the State of Michigan,
versus
Abel F. Fitch, Ammi Filley, Arba N. Moulton, Jacob Tyrrell, Abner Grant, Nathan Credit, Ephraim A. Barrett, Lyman Champlin, Willard Champlin, Erastus Champlin, Hiram Hay, Grandison Filley Lester Penfield, Richard Price, Eben Price, Miner T. Laycock, Orlando D. Williams, Benjamin F. Burnett, William Corwin, Ebenezer Farnham, William S. Warner, Napoleon B. Lemm, Alonzo Holmes, Daniel Myers, Andrew J. Freeland, Eri Beebe, John W. Welch, Welcome Hill, Russel Stone, William W. Lang, Harvey Wakeman, Henry Showers, John Palmer, Seba Corwin, John Ackeson, Christie Blackburn, John A. Lockwood, John Ladue, John Cann, Benjamin F. Gleason, Mills Barbour, Jerome Gould, James Champlin, George W. Gay, William Van Sickle, Erastus Smith, Aaron Mount, William Gunn, Harry Hocolm, and David Loucks, Defendants.

WEDNESDAY, May 28.

FIRST DAY—FORENOON SESSION.

This being the day to which the Court stood adjourned, it was opened at 9 o'clock.

Mr. VAN ARMAN said there was a case in which he was one of the counsel, which was ready, but the Prosecuting Attorney, who had charge of it, was not present to take it up.

The Court said they could not wait for counsel.

MR. VAN ARMAN said that two messengers had been despatched for the Prosecuting Attorney, and he would be present in a very short time.

Mr. VAN DYKE said they were ready to take up the case of the People, vs. Abel F. Fitch and others, set down for trial to-day, and they might as well call it now, before the Prosecuting Attorney arrived, and see if there were any preliminary questions to be disposed of.

Mr. WM. A. HOWARD said that he had been retained by defendents, and since the adjournment of the case, had been east for the purpose of employing eminent counsel to assist trying the case—as his own health would not admit of his taking hold of it. After his return, he submitted a proposition to counsel for the People, to withdraw application for seperate trials, providing the case could be further postponed to the 5th of June, which the counsel all agreed to, but the Prosecuting Attorney. He now asked the continuance of the case until the 5th of June, for the purpose of giving time for counsel to arrive,

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(Hon. WM. H. SEWARD, of New York,) who had been employed, but could not well be here before that time. He stated also, that since he had been retained, he had, a part of the time been sick, and that one other of the counsel, Mr. COOK, had been sick ever since the adjournment of the Court. He withdrew the application for separate trials, and believed that by continuing the case one week, and trying the Defendants all together, the trial would be got through with much sooner.

D. STUART, Prosecuting Attorney, having made his appearance in Court, said his duty to the public forbid his giving his consent to the trial being postponed; there were very many surrounding circumstances attending the case, that made his responsibility to the public great; the case had been postponed to this day, and the prosecution had prepared for it accordingly. He did not believe that the case of the Defendants would be prejudiced in the hands of counsel now present. There were several able counsel employed by defendants, and they had had ample time to procure more counsel and prepare for the trial —as much as the prosecution had. He should therefore ask that the case be taken up, unless the counsel for defendants can give satisfactory reasons to the Court for postponing it.

Mr. VAN DYKE said he should be extremely happy to have Gov. SEWARD here to try the case, but the application for continuance was not based upon good grounds, under all the circumstances.

After some remarks by Messrs. FRINK, WELLS, HOWARD and STUART, the Court said it would like to have counsel agree upon the matter if they could, but the application was not founded upon any legal basis, upon which the case could be continued by the Court, without consent of all parties.

The application for continuance was therefore refused, and the case set down for trial at two o'clock, this P. M.

AFTERNOON SESSION.

After considerable consultation among counsel, a stipulation was entered into by the parties, by which much time and delay in empanelling a jury, and bringing the case to trial would be saved. We understood the stipulation in effect, to be nearly as follows:

A jury is to be empanelled, and a few witnesses are to be examined on certain points, when the case will be suffered to rest until the fifth of June, for the arrival of Gov. SEWARD as counsel for Defendants. The Defendants all to be tried together.

The venire being returned, the following gentlemen answered to their names:

B. Wight,	R. C. Smith,
James O. Graves,	C. G Hammond,
John Roberts,	Benj. Vernor,
I. Goodrich,	Levi Cook,
J. Howard,	Otis Judson,
Wm. Phelps,	Jno. Palmer,
Alex. McFarlane,	Israel Coe,
John Ladue,	Rodney D. Hill,
A. C. McGraw,	Amos Chaffee.

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They were then discharged until to-morrow morning at 9 o'clock. The Court then adjourned.

SECOND DAY.

THURSDAY, May 29.

The prisoners on trial, 37 in number, being in Court, the case was taken up.

DAVID STUART, Prosecuting Attorney, J. VAN ARMAN, JAMES A. VAN DYKE, Hon. JACOB M. HOWARD, ALEX. D. FRASER, DANIEL GOODWIN, WM. GRAY, Esqs., appeared for the People.

HENRY FRINK, WM. A. HOWARD, WELLS & COOK, L. W. HEWITT, and N. H. JOY, Esqs., appeared for Defendants.

VAN DYKE and WM. A. HOWARD stated the substance of the stipulation entered into yesterday, which was to govern the conduct of the suit, with reference to drawing jury, continuing the case until next week, &c. The Prosecuting Attorney said before the Jury were drawn he wished to arraign Arba N. Moulton, one of the prisoners, who was sick when the others were brought out to plead. The indictment was then read to the prisoner named, to which he plead "not guilty."

The Prosecuting Attorney said the following among the Defendants originally indicted, and included in the above list of Defendants, were not now on trial, some having been discharged, others not arrested, and one having died, viz: Alonzo Holmes, not present; Harry Wakeman, do; Seba Corwin, do; Christian Blackburn, do; John A. Lockwood, do; Joh Cann, do; Jerome Gould, do; Geo. W. Gay, dead; Wm. Van Sickles, to be tried in the U. S. Court; Nathan Credit, Harry Holcom, and David Loucks, not arrested.

The counsel then proceeded to draw a jury, when the following gentlemen were drawn from the regular panel, and having been thoroughly proved, were sworn as jurors in the case, the balance of the panel having been either excused for reasons offered to the Court, rejected, or absent.

Rollin C. Smith,	Horace Hallock,
Levi Cook,	Alex. C. McGraw,
Amos Chaffee,	Alex. McFarlane,
John Roberts,	Ichabod Goodrich,
Buckminster Wight.	

The regular panel having been exhausted, the panel was filled by the following talismen:

Stephen Fowler, Ralph Phelps, Silas A. Bagg.

The Prosecuting Attorney announced that they would be ready to go on with the evidence at 2 o'clock, to which hour the Court adjourned.

In the afternoon, three witnesses were examined, and the case continued until Thursday, June 5.

THURSDAY, May 29.

AFTERNOON SESSION.

Van Arman, for the prosecution, said, under the arrangement of counsel, it was not important to open the case at this time, farther than as relates to the testimony now sought to be introduced, leaving a more complete opening for a future time when the testimony should be more fully gone into.

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They sought now to show by evidence, that one Washington Gay, late of this city, was employed by the defendants to burn the M. C. R. R. depot in this city, and that he did burn it at the instigation of defendants; that subsequently, by stratagem, the said Gay was induced repeatedly to confess the said burning and all the circumstances connected with the event; that defendant's hired said Gay for $150, to burn said depot, and paid him said amount for such felonious act, that they furnished him with certain ingeniously made instruments or matches to fire said depot; should also attempt to show the object in view in burning the depot, and other depredations by aid of defendants; that the said depot could not well be fired by accident; that Gay was acquainted with many of these defendants, and acted in conjunction with them. The testimony, at this time, under a stipulation of counsel, would be confined to the one point of burning the depot.

TESTIMONY.

Henry Phelps sworn—Resides in this city now; resided at Sylvan, Washtenaw Co. the past year; remember hearing of the burning of the M. C. R. R. depot last November; knew Geo. W. Gay, late of this city; formerly knew him in Oakland Co.; witness came to this city a day or two after the depot was burned; remained here some 3 weeks; saw Gay in this city at the Palo Alto saloon; had conversation with him about burning depot.

Question—Will witness relate how the conversation occurred?

Objected to by Mr. Frink.

1st. Mr. Gay is not upon trial and his admissions not evidence, at least at the present stage of the case; cites 1 Greenleaf's Evidence, page 187, 110 and 111; 2 Peters, page 354, 364 and 5. Must first prove the conspiracy, and the admission must be prior to the consummation of the intended object of the conspiracy. 1 Roscoes', page 60 and 324.

Mr. Van Dyke said that they would now proceed to attempt to prove the conspiracy, if counsel desired, though by the stipulation entered into, they were not to do so at this time, but they wished to give certain evidence to establish the *corpus de licti;* they proposed to show that certain declarations were made by Gay and communicated back to these defendants, to which they made certain responses, admitting the truth of the declarations of Gay, with regard to the burning.

Wm. A. Howard wished to know whether they sought to prove these declarations home upon each and all the defendants.

Mr. Van Arman said they expected to bring them home to some, if not to all, individually.

Wm. A. Howard did not see the necessity for proving this point at this time, unless it was to prejudice this jury; there was no reason for departing from the rule; the testimony must be confined to Gay alone.

Van Dyke—There are certain number of persons on trial; now any testimony touching any one of them is admissable; they had just got to prove what had been said with regard to the matter, and then prove to whom it was said, and the response, and whether it implicated one or all of defendants, it made no difference.

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Frink, Joy and Goodwin further argued the objection.

Van Arman said they wished to bring home upon some of these defendants, the declarations of Gay, as to the burning and their responses to the declarations.

Hewitt took the ground that under the stipulation they could not offer testimony except as to Gay's declarations of his own acts.

Court—It is charged that Gay burnt the depot, and that defendants were aiding and abetting in the act. Under stipulation of counsel they are confined to proof of one point.

Frink asks Court to instruct the witness to confine himself to what affected Gay himself, and to that there was no objection.

Testimony resumed—How did the conversation between you and Gay occur?

It was first introduced by speaking of some men who had been arrested for counterfeiting—one Van Sickles and Van Houghton, and what would be the best mode of getting Van Sickles liberated. Gay proposed several modes, and mentioned the burning of one of three or four of the depots of the Central Railroad, stated the mode by which he could be liberated by the burning of a depot. The plot was as follows:

Mr. Van Sickles, who was then on bail, for counterfeiting, could be placed in jail—the depot at Ypsilanti, Ann Arbor, or some other one be burned, and on furnishing information of who fired it, Van Sickles could get released, and they could also doubtless get $1,000 reward from the Railroad Company, for the information, besides getting $200 from his (Gay's) *friends* for setting the fire.

It was suggested that the burning should be laid to Joseph Boyce.

Witness asked why not predicate a similar thing, or plot upon the burning of the depot already burned; Gay replied that it would not do, "there are *too many of us* engaged in the burning," and besides he rather thought Boyce was in jail at the time. I went to Gay's house that night and found Van Sickles there. Mr. James Dodson went with me. I think Mr. Van Houghton was also there, but soon left. There were several women there too, and several persons in and out during the evening. At the first interview at the Palo Alto saloon, Van Sickles, and the defendant, Erastus Smith were present and took part in conversation.

In the evening Van Sickles related the position in which he was situated in the arrest for counterfeiting. Gay then again stated the plan of operations. He would first get Boyce out of jail; then they would burn a depot somewhere on the road and swear it upon Boyce. Gay said he knew a first rate man and his wife who would swear that Boyce told them before the burning, that he was going to burn it, and afterwards that he had done it.

Witness asked who would pay the two hundred dollars, and if it would surely be paid. Gay said it would, they had paid $150 for burning the depot in this city, and gave witness to understand he had the money in his bar. (Gay kept a sort of grocery in the upper part of the city.) He said he knew the man by sight who paid over the $150—it was raised by a company of men. There was considerable said by Gay and Van Sickles during the evening; witness related what

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he had heard and learned, to George C. Bates, Esq., who advised him to return in the morning.

Went back to Gay's next morning—found Smith on the road, near the City Hall, who went with him. At this meeting, was not positive whether Van Sickles was there—think he was not. Gay said him and Van Sickles left the matter in this way; they were to burn another depot, and have Van Sickles make a sham expose against Boyce, to get clear himself.

Gay said he burned the depot in this city with a match placed in the cupola; the match was in a box. Smith heard a part of conversation, and afterwards intimated that he received a portion of the $150, said Gay did not keep quite all of it.

Witness and Smith left together, and went that day out to Salem, Washtenaw Co. to Van Sickles house. On the road they talked freely of the matter, and Smith said the depot was burned under an arrangement with Gay, of which he was cognizant, and also told who paid over the $150.

Defendants object to any admission of Smith that Gay burned, &c., on ground that it covers more than one point. Sustained.

Next saw Gay on the 13th Feb., at Central Railroad Depot, near Johnson's Hotel and Savanack's Saloon; had a conversation relative to the burning of the Depot. Gay showed him $50 which he had received from the same man who paid him the $150 for burning the old depot—it was paid for burning the new depot—said he had been furnished with two matches for the purpose, the same as the one with which he was furnished to burn old depot, and by the same person.

Gay said the person who delivered the match was then in the city. Next saw Gay 24th February, at his house; Mr. Lake went with me. Got there about 9 o'clock P. M. Gay related the conversation again; said he was bound to clear Van Sickles, but could not predicate it upon the burning of the old depot, because Boyce was in jail when the old one was burned. He exhibited a match which he said was like the one used in burning the old depot. He stated in presence of Lake the amount he received for burning the old depot, and how he received it; the match exhibited was similar to one subsequently found at Gay's house; it was in Gay's chamber when he saw it; he brought it from a bed room; it was the same match subsequently seen by Clark and Van Arman.

Next saw Gay in fore part of March, at "Bill Brown's" house in this city—Lake was present. Gay reiterated his former story how he managed to fire the old depot. He went in while hands were at work, went up stairs and deposited the box in the cupola; placed the fire in the box before he left home,and when he left it,took off the cover; was a good deal of talk about burning new depot at this interview. Next saw him on the evening of April 1st, at his house; Mr. Van Arman was with me. Gay again reiterated in substance what he had before told about burning; said he could give the new depot a better scorching than he did the old one.

Was next at his house on the 8th of April, in company with Darius Clark and Mr. Van Arman; had a general conversation in reference to burning the new depot, and also the old one; was there again with

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the same person and Mr. Lake, on the night of the 9th, conversed about burning depot. Gay said he could make more by burning depots on the railroad than by any other way; he could get $50 more for burning the new than the old one.

Again he referred to the scheme of laying it to Boyce, and told them he would see David Stuart in the morning and find out whether Boyce was in Jail at the time the old depot was burned, and also how much the railroad company would pay to be informed who burned it; and Van Arman (who had gained the full confidence of Gay as a co-laborer) was to go to Hillsdale and get "old Sile Doty" out of jail by his making the expose against Boyce, and the railroad company paying $100 reward for the information. (We suppose Van Sickles had been liberated by some other means.)

On that night, asked Gay to see the match, as witness was about to have one finished and wished to see that it was made right. Gay said there were a good many about the house, but he would get it and exhibit it up stairs. He did so, and Clark and Van Arman saw it at the same time, and witness at the suggestion of Clark, went up the second time alone, and placed a private mark upon it. In conversation about burning the new depot, said he had the tools in his house to do it with; the same used in burning the old one, and they would take effect.

Witness introduced Van Arman under a fictitious name as a man from Indiana, who came to get Doty out of jail. He had before told him that he had a friend coming in a day or two, for that and kindred purposes. He also told Gay that Van Arman was an engraver and had got up a plate for counterfeiting bills on the Michigan State Bank, and Van Arman showed Gay a number of genuine $5 bills in blanks, as counterfeits and a partly finished counterfeit plate, which pleased G. much especially the fives, as they were so good an intimation of the *genuine*.

Mr. Van Arman, and also Mr. Clark, were more or less disguised by their dress.

Witness introduced Mr. Darius Clark as Mr. Wolf, of Illinois, and who came well recommended as the right kind of a fellow for operations. On the first night Clark affected to be pretty drunk—witness and Van Arman excused the matter by saying he was on a considerable of a bender that day owing to a big 'strike' he had recently made in some counterfeit bills on the Wisconsin Fire and Marine Insurance Bank, but he would be all right by the next day, when he became sober. Clark, during the evening, exhibited some genuine bills on the Wisconsin Bank as counterfeits. In a conversation told Van Arman in case he should be in a tight place, and wanted protection or a hiding place, he could get it any time by giving a certain signal at the door; and as for plunder he could hide more than five man could steal. He had a place under the side walk where he had hid enough to make any one rich, and if happened to be found there he would know nothing about it—it was not in his house and that he would not be responsible for it.

Darius B. Clark, sworn—Knew Geo. W. Gay for the first time two years ago. In April last went to his house in this city with Phelps and Van Arman—went disguised for the purpose of seeing a certain match which had been represented to him as being there. Went as Mr. Wolf,

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of Illinois, engaged in counterfeiting and kindred operations, as the friend of Sile Doty, for the purpose of getting him out of jail, &c.—Went to his house again the next night, and having gained Gay's confidence, heard him say in conversation on the subject, that he burned the depot in this city, and could get $200 or $50 more for burning the new one than he got for burning the old one. Saw a curiously made match for firing buildings, &c. In conversation about Doty, Gay told the situation of the Hillsdale co. jail—that he worked upon it while building, and had left a place for himself and friends to escape, by a place in the wall, which could be easily broken through. I procured a bank note plate and bills exhibited to Gay at the State Bank in this city, for the purpose of carrying out the plot we had laid to gain G.'s confidence, and ferret out his operations and his associates.

Heard Gay's plot of charging the burning of the depot upon Boyce, (as related by Mr. Phelps.)

Agreed upon a plan to break open a bank in this city, and also to go to Hillsdale, break open the jail and liberate Doty—were to steal a horse on the road and enter into various and sundry like business transactions.

John Van Arman, sworn—Was in this city April 1st, and went to Gay's house for the express purpose of seeing the match spoken of—was introduced as Mr. Johnson of Ind.,—was familiar with Gay's and Doty's former history from having been engaged in suits in Southern Michigan, and Northern Indiana, their former field of operations. Asked Gay if he was not once at a place known as the "Tamerack," a notorious rendezvous for scoundrels in Southern Michigan, with Doty; said he was. He mentioned several other incidents with which he knew Gay was familiar, which led him to believe he was 'one of 'em.' By this means and others he soon got the full confidence of Gay, when he unbosomed himself to witness and related many incidents of his former life in crime, including a murder by Doty, in which case Gay carried off witnesses to get him clear. Gay said he was an old friend of Doty's, and something must be done to get him out of the Hillsdale co. jail.

Witness avowed himself a friend of Doty's, and his business here to be partly for the very purpose of getting assistance for effecting that object.

On the 8th of April he went to his house again with Clark, and heard conversation with Gay about burning depots at Niles and Detroit, and other schemes.

Went to his house again the next night, and had a conversation with him—Gay said they could get $1000 for burning the depot at Niles, and divulged his plot for swearing it on Jo. Boyce, by a man and his wife—fully corroborating the testimony of Phelps and Clark. G. said he was willing thus to sacrifice Boyce, because he disregarded the old motto, "honor among thieves"—he would steal from his best friends, and gave him several instances of his doing it. Another thing he charged against him was that he had gone off and left his wife—deserted her, and she was there at his house. He pointed her out to witness.

Saw the match or infernal machine referred to by Mr. Phelps and Clark.

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It was a block of wood some 10 or 12 inches long, and 6 or 7 in diameter. In one end near the sides were bored three large holes nearly to the other, which met holes from the sides.

The long holes were filled with cotton, stuffed in around a flue or chimney in the centre, formed by a roll of paper or pasteboard. In the centre of the block were holes which had been varnished and filled with camphene, then covered over and sealed with wax.

(The operation of the instrument would be as follows: When properly loaded it was placed in a box with light shavings or combustible substance at the wax end. The fire was then communicated to the cotton by means of the side holes connecting with the flues or long holes at the base or opposite end of the block. By means of the chimneys in the centre the fire would be kept burning, either slow or fast, according to the compactness of the cotton—it could be packed so as to burn through the length of the block in one hour, or 24, or any other desired length of time up to three or four days.)

Gay stated that he worked on the Hillsdale co. jail during its building, and told of a certain weak place he left in the wall, by which Doty could be got out, and agreed to go there with witness, (agreeing to steal a horse on the road,) and get him out. After agreeing upon the plan of operation for several other enterprises, among which was a plan for robbing one of the city banks,—witness suggested that in case he should get into straightened circumstances—into a tight place, he might want some safe place to hide, and receive the protecting care and attentions of a friend.

Gay told him he could always find such by coming to his house and giving a certain signal on the door; and as for the plunder he might get, he could hide as much as five could steal—he had an excellent place under the side-walk, where he had enough to make one man rich, &c.

Gay fully divulged all of his operations in burning the depot, and getting his pay for it, how much, and who paid him, &c., &c., and offered to go out in the country the next day, and introduce witness to his friends and co-laborers, where he could find any amount of facilities for carrying on their schemes.

Witness has since been to Hillsdale and examined the jail, and found just such a defect in the wall as described by Gay.

After Mr. Van Arman's testimony closed, the Court adjourned for one week, until June 5th.

THURSDAY, June 5th.

THIRD DAY—MORNING SESSION.

The Prosecuting Attorney stated to the court that ex-Gov. Seward had been employed on behalf of the defendants, and moved that he be admitted as an attorney of record of this court for this case. Admitted.

MR. FRINK said, before proceeding to take up the case, they proposed to offer bail, from day to day, on all of the indictments, for Abel F. Fitch and Benjamin F. Burnett, and asked that the amount of bail required be now fixed.

Mr. VAN DYKE would like to know who was proposed as bail.

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Mr. FRINK offered on behalf of Fitch, Henry S. Holcomb, Harrison F. Holcomb, James Snyder, James Videto, Jacob Crout, Alex. Ford, Anson H. Delemater, Sam'l Marsh, Amasa Marsh, Chauncey Hawley, R. B. Rexford, J. S. Hurd, Jas. P. Elliott, Geo. Snyder.

On the part of Burnett, J. S. Brown, Uri David, Ralph Updike, Lorin C. Watkins, L. Mills, Dan'l H. Mills, E. M. Barnes, H. L. Albro, Sam'l Upton and Geo. W. Watkins.

Prosecuting Attorney STUART said the amount required would be $15,000 from each for the case now on trial, and half of that amount in each of the other indictments.

Mr. FRINK submitted to the court that this was exoabitant bail; and some three or four of these indictments were only for a misdemeanor, therefore did not demand that such bail be required, and asked that the court fix the amount at a reasonable figure.

COURT—The amount of bail sometimes has reference to the pecuniary condition of the defendants, and also to the nature of the offence.

FRINK—Mr. Burnett was not worth over $1,000 in all, and said Fitch, he was now informed, was worth not to exceed $8,000—somewhere from $5,000 to $8,000

STUART said on several occasions defend ants had proposed bail, and always declared themselves ready to give bail in $100,000, or to an indefinite amount beyond that. All the prosecution want is that the defendants, whom it is said are able to give any amount of bail, should give such bail as will ensure their attendance from day to day.

J. M. HOWAED, for prosecution—Said the offence was of a very serious and aggravated nature, and no trifling bail should be thought of or asked. He then referred in detail to the different indictments, and remarked at some length upon the serious nature of the charges for which they had been indicted by the Grand Jury.

Mr. W. H. SEWARD, for Defendants—Said he had no knowledge of the merit of this case or the circumstances attending it, except what was spread upon the record, and the assertions of his associate counsel. He found 37 prisoners at a bar, all charged with the same offences; two of them ask the boon of giving bail during the trial, that they may better defend themselves. The amount of bail required was excessive, and if it was his case he would rot in jail and rely upon the sympathies of his fellow men, before he would submit to such persecution and oppression—his advice therefore would be, if this excessive bail was persisted in, to refuse to give it.

VAN DYKE thought it was not much of a hardship to demand so much less bail than defendants had frequently announced themselves ready to give. It was an important move—if by getting this bail, any time during the trial, one of the defendants should forfeit his recognizance, fail to make his appearance, the whole proceedings were stopped and all that had been done would be null and void. He did not believe the prosecutors were liable to the charge of oppression or persection of the defendants—its duty was plain and must be followed, in spite of all charges of oppression, and all reflections by remarks of counsel. Prosecution was ready to offer affidavits as to the necessity of this amount of bail if it was required.

FRASER continued the argument for the prosecution.

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FRINK did not know the counsel for the defendants had offered bail to the amount of $100,000—there had been some reference to the subject in conversation among counsel. But it was immaterial what had thus been said. It did not touch this application. He denied the right of prosecution to offer affidavits to influence the amount of bail.

STUART, Prosecuting Attorney, hoped nothing in this case would assume a personal character by insinuations and inuendos of counsel.—Defendants' counsel had repeatedly declared their ability to give bail in the amount of $100,000, and if necessary, to the amount of a million—they had represented that nearly all Jackson county, were ready to come here and bail these defendants; and now they thought it exorbitant to demand less than one half that amount. There were insuperable objections to allowing bail, as they were liable to be arrested and taken out of the jurisdiction of this court to another county where they had also been indicted.

SEWARD said he would submit to this court; that this was a court of justice, and that these defendants were prisoners at the bar, and that the constitution of the country was not a fiction; that they had constitutional rights, and that in all cases where they were entitled to bail, there were no insuperable objections to giving such bail in a reasonable amount. The amount demanded was $45,000 for each—amounting in the aggregate to nearly two millions of dollars—($1,665,000.) It was beyond the ability of most of them to procure—it was exorbitant.

Mr. VAN DYKE said if the court thought fit to overrule the amount of bail required, they wished to prepare specific affidavits upon this point, that at least this amount should be required in the case of these two defendants, as they were looked upon as the head and front of the whole gang In the case of some of the defendants this amount of bail would not be required.

The Court said, to give counsel time to prepare affidavits, the Court would adjourn till afternoon.

THIRD DAY.

THURSDAY, JUNE 5th.

Afternoon Session.

Pending Mr. Frink's objection to the amount of bail required, the Prosecuting Attorney read the affidavit of Darius Clark, setting forth that he has been employed as agent of the M. C. R. R. Co. for the past eighteen months, in ferretting out the persons who committed depredations upon the railrood; that he was familiar with proofs to be adduced on this trial, and that from information within his knowledge he believed Abel F. Fitch to have been the leader of a combination of men who committed the various offences on the road in Jackson Co., and instigated them to the said unlawful acts, and that had it not been for his shrewdness and cunning, the gang would long since been detected and brought to fustice.

Affidavit of G. V. N. Lothrop.—The affidavit of ex-Attorney General Lothrop was read, setting forth that while he was acting in his official capacity as Attorney General of the State, he was called to

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Jackson Co. to investigate certain depredations upon the road, at the time one Lester was arrested for placing obstructions upon the track at Leoni; that during the year he was frevuently called to Jackson Co. to ferret out the authors of the depredations, and that during his invesiigations of the subject, he became convinced that Fitch was at the head of an organized body of men for injuriug the road, and the chief instigator of the offence, and believe that had it not been for his management, the offenders would long since have been discovered.

Affidavit of Geo. C. Bates read—Stated that the Grand Juty had recently found two bills of indictment against Abel F. Fitch and others, in the U. S. Dist. Court, one for counterfeiting U. S. coin. and one for obstructing the U. S. mail on the M. C. R. R.

Affidavit of L. Baldwin, Sheriff, read—The sheriff of Berrien Co. and also the U. S. Marshall, had placed in his hands warrants against Abel F. Fitch for various offences against the railroad, and for counterfeiting U. S. coin.

Affidavit of James F. Joy read—Has for some years past been the attorney of the M. C. R. R. Co.; been engaged in investigating the cause of the depredations upon the road in Jackson Co.; from the best information in his power, he believes there has been an organized body of men, who were bonded together for the purpose of committing depredations upon said road, and mutually pledged to defend each other in such acts and the consequences thereof; that Abel F. Fitch was the leader and guide to said body of men for such purposes, and that had it not been for his shrewdness the offenders would long since been detected and brought to justice.

Counter affidavit of Abel F. Fitch, and B. F. Burnet—they deny being guilty of any of the charges against them in any of the indictments. The affidavit of Fitch sets forth that he is innocent of the charges against him in the U. S. District Court, for counterfeiting, referred to in the affidavit of George C. Bates, U. S. Dist. Att'y, or of the charges upon which they have been indicted in Berrien Co., or of any other offence of which they are charged in these indictments; that said Fitch is not worth to exceed $8,000 above his liabilities—of Burnet that he is not worth to exceed $1,000.

Van Dyke said he was glad they were to have a legal discussion upon this legal question. After having read many authorities, and argued the question at considerable length.

Hon. Jacob M. Howard said he would add a word as to the liberal provisions of the statutes in providing for the attendance of witnesses on the behalf of prisoners—teey had the power to call witnesses from any part of the State at the public expense. He did not think the bail required was excessive—they only wanted such bail as would ensure the attendance of these defendants at the bar of this court. Look at the magnitude of the crime. A vagabond who passed a $5 counterfeit bill was required to find bail in the amount of $1,000 or $1,500, and if he could not get it, he must go to jail, and nobody complained. The offences here charged were of a much more aggravated nature, involving millions of property, and thousands of lives of innocent persons.

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W. H. Seward said he was glad that this court had some other guide than the popular opinion of the people of Michigan—it was to be governed by that "higher law," to which the gentleman referred—the constitution of the State, and he hoped also it would be governed by that still "higher law," than the constitution of the State—a proper sense of its obligations to God and humanity, and love of liberty for the oppressed, under all circumstances.

Court—So much has been said on this subject thut I propose to say but little. It does not depend precisely upon the amount of property a man possesses—If a man should steal one hundred thousand dollars, it would be competent to require at least, that amount of bail, for otherwise, if only ten thousand was required, he might furnish that amount of bail—forfeit it, and step out with the balance, making a fair speculation. It makes but little difference of what the aggregate bail would amount to, in case all the defendants offered to give it. In this particular case the bail should be fixed at a much higher sum than in some of the other indictments. I have in my own mind fixed the amount of bail, though I do it under great responsibility. The prosecution may think it too light, and the defendants too heavy. In the case of Fitch, the amount in this case is fixed at $10,000, in the next case 2,000, next case 1,000, 4th case 5,000, 5th case 2,000, making in all 20,000.

In the case of Burnett, in the first indictment, the amount is fixed at 5,000, in the second case, at 1,000 in the 3d case at 1,000, in the 4th case at 2,000, and in the 5th case at 1,000, making in all 10,000.

The defendants then presented their sureties, who were sworn and severally examined as to their ability to go bail—first for Mr. Fitch, and answered as follows:

John S. Hurd, of Jackson, occupation farmer, have property there, and in Ingham, consisting of land, don't know how much I have without figuring it up—it is worth over 10,000—it is in my own name—all unincumbered except some 200—owe in all some 600—am worth over and above all liabilities 10,000—am worth in all, real and personal, above debts, at least 20,000.

Henry S. Holcomb—am worth 5,000, property consists mostly of real estate, in Jackson and Ingham Cos. owe five hundred and seventy-five dollars in all—own 6,000 acres of land and 1,000 dollars personal property, and some bond and mortgages—is surety for Co. Treasurer, on bonds of 30,000.

Jacob B. Crouse—Property consists of bonds and mortgages and real estate, clear of incumbrances, have 5,000 dollars in money at interest, am worth in all from 10,000, to 12,000, over and above debts.

Lewis Snyder—Consider my property worth 5,000 over and above all debts, have no liabilities on my farm except my old woman, have been offered 5,000 for my farm.

Lewis Snyder, Jr.—Own farm worth 6,000, have 350 acres in Spring Arbor—incumbered for some 200 dollars only, consider it worth 5,000, above debts and liabilities.

The above gentlemen then acknowledged themselves as sureties for Fitch on the second indictment, to the amount before named by the Court.

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For Benj. F. Burnett, the following were sworn and answered as to their ability to become bail as follows:

HoldenL. Albro—am worth $5,000, have a farm of three and a half lots in Rives, Jackson Co.—went to New York, bought a bill of goods and mortgaged my farm, in all for about $2,100. Bought a bill of goods in Buffalo of $1,300, and owe $700 on them—owes about $1,700, besides $1,100 mortgages.

Ralph Updike—have a farm of 39 acres, which is encumbered $1,400—worth $4,000 above all liabilities, have taken security on a mill in Waterton for the $1,400 mortgage—owe no other debts, am security for no other debts.

Edward M. Barnes—property consists of lands, stock, &c., have 100 acres of land, 70 improved, and encumbered $500, which is all —owe some $15 to stores, &c.—am worth $2,000.

Geo. W. Watkins—am worth $4,000—in real estate and personal property, incumbered $400—have stock on farm to the amount of 600 dollars—am security for 200 dollars—am worth $4,000 above all liabilities.

Stephen Mills—worth 3 or 4000 dollars in 93 acres of land, near Ann Arbor, where I live, nearly all improved, no incumbrance, owes about 250 dollars, have 60 acres of land in another place—have owing to me some 8 or 900 dollars, am security for no one, consider my homestead near Ann Arbor worth 35 dollars per acre.

Daniel H. Mills—reside in Pittsfield, Washtenaw County, own one lot of land worth $30 per acre to me; 75 acres improved; owe about $50 in all, and not security to any one—no incumbrance on land, and worth, above all debts, $2,500.

S. Updike—live in Jackson county, am a farmer, have one hundred and thirty acres of land, ninety improved, worth $20 per acre to me, mortgaged for $200, only owe besides some $70, am not security for any one, have cattle and sheep to the amount of $150 worth, in all some $2,100.

J. R. Brown—am worth $2000 above liabilities and exemption law, that amount is money at interest.

Uri David, consider myself worth $2000, owe no one, am security for no one, own eighty-nine acres of land at Grass Lake, seventy improved, worth $30 per acre.

Lorenzo C. Watkins, live at Grass Lake, owe about $100 aside from $500 mortgage, am worth, above all debts, $1000, own the life lease of one hundred and thirty acres of other lands.

The above persons then recognized in the sum before mentioned with Mr. Burnett for his daily appearance at this court during the trial, to answer to the various indictments.

The Prosecuting Attorney said in the matter of the 5th indictment it was not pending in this court, but in the County Court, and therefore any action here did not effect that, and they did not seek to take sureties as to that one. The foregoing persons might enter their sureties with Burnett, and the prosecution would examine the matter this evening. They didn't now deem them sufficient, under the exemption law. The prisoners could not now be discharged as there were other suits, a civil suit in which $50,000 bail was required,

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and still others pending, to prevent it. The prisoners were remanded to jail, and the court adjourned until to-morrow morning at 9 oclock.

FOURTH DAY.

FRIDAY, June 6th.

The Court met at the Circuit Court room, and by consent of all parties, adjourned to the City Hall.

Mr. Frink said, they were ready to take up the motion to quash capias.

Mr. Joy said, the notice was not served upon him until last evening, as the court adjourned, and he had not had time to examine the matter; therefore he was not ready to take it up at this time.

Court, one day will be allowed to take up the motion, in the meantime other matters may be taken up.

Stuart, Pro. Atty., submitted the result of investigation, as to the ability of bail offered in case of Burnett. As to Albro, who swears he is worth $4000, his own showing makes his debts $3,500, 2,100 in mortgage.

After referring in detail to the several affidavits of sureties for Burnett, and referring to the exemption law, he suggested that bonds against them all could not be negotiable for $3000; and therefore he did not consider them good to the people of this County for $10,000.

Wm. A. Howard, for Defendants, claimed that Albro was competent bail for several thousand dollars, he had goods enough on hand to cover his indebtedness.

Court, would consider Albro good for $2000, and from the showing of others, in consideration of the exemption law, the bail should be somewhat increased. It was out of the county, and should be, therefore, of the most substantial character.

Frink, said, they would withdraw these sureties on the first, and offer them the remaining three indictments; and would offer on Wm. A. Howard as surety in the one now pending; accepted.

Mr. Howard acknowledged in a recognisance of $5000 on the pending indictment, and said he wanted the entire control of the prisoner, and asked a bail piece. Van Dyke said the clerk would give a bail piece if he thought it his duty, that matter could be settled hereafter.

Frink wished the amount of bail fixed for Gleason.

Wm. A. Howard would like to have the amount of bail fixed for each of the defendants, as others during the trial might offer bail.

Wells read the affidavit of Gleason, setting forth sickness, &c. &c. for the purpose of getting amount of bail reduced.

Court.—The court will meet at any time in the afternoon, after the Jury are discharged, to take up any of these questions, so that the Jury may not be detained during the discussion of them. The Court will fix the bail at 10,000 dollars for any of the other def'ts, unless some showing is made, which was agreed to.

Mr. VAN ARMAN proceeded to open the case to the Jury. Said he should confine himself to facts, and avoid making an exaggerated showing calculated to prejudice their minds on the case. He stated

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the nature of the iudictment. Should show the burning of the Railroad depot in this city by one Gay, and that he was acting in concert with and at the instignation of these defendants—that they paid him for the act. Should prove that the depot could not well be burned, but by design. Should show the organization of a conspiracy among the defendants at Michigan Centre and vicinity, for the purpose of committing depredations on the Michigan Central Railroad. Should not not be able to prove a conspiracy by written contracts—the law did not require such proof; but should establish it by competent and satisfactory proof. Could not show that all of the defendants were always present at the meetings they frequently held to concoct their plans of operations; but should show their threats and acts.

Should be able to show them in the act of placing abstructions on the track, and boasting of unlawful and murderous designs. Should show their numerous secret meetings, and by almost providential means were able to give the conversations there—the plots formed to destroy life and property—the manufacturing of various infernal machines for the purpose—that they were leagued together and bound to assist and defend each other in crime, if necessary, by perjury,—that they boasted they could impeach any witness brought against them, &c.

Mr. Van Arman referred to the means employed to ferret out the offenders, by spies—referred to many of the henious acts with which the def'ts stand charged, and the proof by which they would be established, which it is needless to publish now, as the testimony will more clearly show the facts in the matter. He closed with an eloquent and beautiful allusion to the spirit of this age of improvement.

The prosecution then proceeded to call witnesses.

Gilbert B. Avery.—Am a carpenter and joiner; reside in Detroit; was and am acquainted with the machinery in the old Central Railroad depot; the depot was 800 feet long and 100 feet wide; near the centre was a cupola that rose over the building, in which was the machinery for raising and lowering wheat, flour, &c.; the engine was on the north side, a little more than half way down the building, with brick partition all round the engine, separating it entirely from the rest of the building. The machinery was worked with belts; the main shaft run nearly the whole length of the building, a few feet over the 2d floor; the machinery run in cast-iron boxes; was soft metal (Babbit's) to prevent friction; the most friction was on a belt in the second story, (a leather belt,) which ran faster than the other belts and was more tightened; this belt, between the shafts was 24 feet or so—40 feet long in all; the belt made about 85 revolutions in a minute, usually; the shaft on which it moved was iron; the pulleys also iron. I am a machinist and have seen and run a great deal of machinery.

Question: What amount of heat would be produced by the friction of this belt at 85 revolutions a minute?

Objected to. Argued by Frink, Seward, Van Arman and Van Dyke. Objection withdrawn.

I examined it several times and never found the journals warm;

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the journals are the ends of the shaft that rest in the box; it had been in operation two or three years. There might be weight enough put on to generate fire, but with the weight on this, I deem it impossible. One shaft was about twelve feet lower than the cupola, the other shaft was on the south side of the building, a little over the floor, about four feet from the main floor. In the upper part of the building, beneath the cupola, the floors were two thicknesses; rafters of white-wood and pine shingles on the roof; the the main shaft was directly below the cupola on the north side, running the whole length; to communicate fire to wood in which they set, the whole iron boxes should be well heated; the nearest wood had three inches between it and the friction, that is, the thickness of the iron boxes; the wood in which the boxes set were mostly oak, but a few intermediate ones were pine; the first pulley was three feet in diameter, the other that worked above was two feet in diameter; there was no friction to cause heat, save in the journals; the belt below ran faster, and the machinery as it ascended worked slower; the most friction was below, near the engine; the engine was calculated at seventy revolutions; the pulley direct from the engine and below moved one hundred and fifty to two hundred revolutions a minute; there was a pulley in the cupola, but run slower; the pulley below was fixed in boxes; during the three years it run I had repeated opportunities and never knew of any of the journals getting hot or setting fire to anything; I have known shafts with the same weight to be driven on wood; know one of the same size that run on basswood six hundred revolutions and never took fire; I mean the shaft lies on wood; do not thiuk even on wood there would be any danger at one hundred and fifty revolutions. The belt in the second story had its pulleys about eight inches from the ceiling of a wheat bin.

From your knowledge of that machinery and from a general knowledge of such machinery, was there, in your opinion, any liability of fire being occasioned by the friction of that machinery, under the given circumstances? Objected to and objection overruled.

I should think it was not possible for it to have taken from fiiction; that is now my opinion and I thought so from the first.

I was in the city at the time of the fire; the depot was built and owned by the Michigan Central Railroad Company; it was situated in this city and county. At the time of the fire I was 20 or 30 rods from the building, where I live; when I first saw the fire it extended about 3-4 the length of the building; the fire was on the morning of the 19th November, 1850; don't know what hour exactly; there was broad stairs up by side of office to 2d floor, and thence to cupola; the access was generally open to persons to go up; there was nothing in cupola but machinery, and the wood connected with it; there never was any means to prevent persons passing up to cupola to my knowledge; have often gone up there in the evening, and never saw any person to watch or prevent persons going up; the outside doors are also open generally; if the fire had taken below it would have to burn the floor before getting up to cupola; the 2d floor was filled in with brick and mortar to prevent fire pas-

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sing up; when I arrived I think the fire was too far along to prevent any one's going into the building; never before was any fire there to my knowledge; the building was and is used as a Railroad depot; the building and machinery must have cost $80,000.

Cross Examined—I helped to build the depot and also helped to repair the machinery; never repaired pulleys, but have seen them taken out and overhauled; don,t think the pulleys were ever changed by new ones, but additional ones were put in at one time; there were wheat bins in same room with machinery, but space between; overhead all was one room; the bins for wheat were of wood; think of pine; there were about five bins.

Mr. Seward here states the grounds of his objection to the question allowed, ie, that it called for opinion, and asks to note exception.

Witness resumes—Bins were used for storing wheat and grain; my impression is there was wheat in them that night; they were of studding, 4 by 6, and rough boards nailed on; don't know that there were men at work at bins the night of the fire; I should think at time of fire there were about forty men employed by the company about the whole building; these men were not employed all of night and day; I understood that those who were employed elevating wheat, worked till 12 at night; they used to have lights on the 2d floor where the bins were, but never saw any in cupola; they generally used common tallow candles I think; they were in tin sconces, generally hung up on one of the back posts; don't recollect ever seeing the candles carried about below; I have seen lamps and lanters carried about; don't recollect ever having seen candles on inside of bins; building was used for storing, forwarding, &c., and they received all kinds of merchandize; don't recollect, but think at time of fire Mr. Stewart had charge of receiving wheat; don't know that there was turpentine and such things there at that time; have seen such below, but never above; don't know what hour they generally closed doors, have sometimes gone in as late as 9 P. M., and later through the yard from my room; the engines sometimes ran into the building, but generally was put back of train when going in; used wood fuel on locomotives; at that season a good deal of freight coming in, but not so much as earlier in season; freight trains every day, sometimes came in at seven or eight in the evening, and sometimes were later; to my knowledge never used matches; don't know how they were in the habit of striking their lights; there was no other building nearer than fifty feet; the machine shop was twelve or fifteen rods off; engines were in the habit of running into the depot to draw trains out.

The cupola was not ceiled or plastered; it was covered with fireproof paint on the inside, and the roof on the outside; cupola was about thirty by thirty-three feet; the machinery stood in centre, and could pass all around it; cupola was about twenty-two feet higher than the ridge of the main building; it was about eight inches from the shaft to the studding of the bin; the roof of the depot was part white wood and part oak; don't know how many men were generally employed in elevating; unless when loading a vessel don't think men would be in the bins; the bins were of two sizes, some twenty-

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five feet and some thirty-five feet by fourteen feet; Mr. Hawes had charge of putting up the machinery.

Re-examined.—From the ridge to the second floor is about twenty-five feet; don't know much about the spark-catchers of the engines. There was a stairway and hatchway every fifty or fifty-five feet, but no aperture over the engine track in the floor; at night have seen a man who said he was a watchman.

Abraham C. Frazier.—Reside in Detroit; was acquainted with the construction of the depot, and the character of the machinery in it; am a mill-wright and acquainted with machinery of that kind; have followed that business for about fifteen years; I worked on the machinery in this depot about three months; I worked mostly putting up the shafting; know of the velocity and situation of said machinery. There was a large band that run horizontally and drove the main shaft; this band run from sixty to seventy revolutions a minute; this shaft run in the centre in brass boxes, the rest cast iron; some may have had Babbitt's metal; the boxes in pulleys were in iron boxes, about one and a half inches in diameter; one of the pulleys ran from two hundred to two hundred and ninety revolutions; this was the fastest in the building; considerable weight on it; main belt ran over it; the boxes were in wood; some oak. I have known the boxes to get a little warm, but never enough so to create any danger of fire. In my opinion there was no danger of fire from the friction of the machinery; seen similar machinery run with greater velocity with safety. With proper care this machinery might be run one thousand revolutions with safety. From what I know of that machinery and machinery generally, think, placed as it was, there was no danger of fire from its friction. I left the city about three weeks before the fire; during the time I was employed on the building, never knew of fire taking; roof was painted with fire-proof paint; walls of building were of brick.

Cross examined.—This machinery was put up with more than ordinary precaution against fire—the boxes were of the ordinary metal; the wood at the pully of greatest velocity was perhaps within an inch, and was, I think, of white ash, a small frame made for the purpose. The shaft I spoke of was about seven hundred feet; there were a great many pulleys connected with it; the pulley I have spoken of revolved considerably faster than any other connected with the elevator; one of the pulleys is very near one of the bins; this is the pulley I have spoken of, it was ten inches in diameter; never saw any merchandize on second floor, only saw flour and grain there; generally had lamps to carry about; I have been in the upper part in evenings when men were at work there; don't think the depot was extra hazardous; I assisted in putting up some of the machinery—a man named Tower also and Buaty; It had been commenced by Hawes, but he left before I came. The elevators were up when I came.

Chas. H. Tower—Reside in Detroit; did not reside here at the time of the fire; was acquainted with the Depot and its machinery; am a mill-right; have been for 10 years and have had charge of conduct and running of such machinery as was in said depot; I work-

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ed on the depot about three months at the machinery, putting up shafting, &c.; know the situation, construction and mode of running that machinery; recollect the band that turned the main shaft; it was not connected with the elevator; recollect the pulleys used to tighten the band; the pulleys ran at different rates; some ran two hundred and fifty; no part of the machinery ran more rapidly than those pulleys that I know of.

In my opinion the machinery and fixtures connected with it were not liable to take fire from friction; in my opinion there was no possibility of it so taking fire; the fast pulleys I have spoken of were about ten feet from the nearest part under the cupola, not estimating the perpendicular which is some thirty feet.

The Cupola was based on beams that were above the second floor.

The wheat bins were nearer pulleys than was the Cupola; one pulley was eight or ten feet from the bin; this pulley was in cast-iron boxes set in wood, four by six, of either oak or ash; at the time of the fire I was at Michigan City—had been absent about six weeks; the moveable lights generally used in the upper part, were lanthorns, and stationed ones were candles set up on the oak posts; the posts were about one foot square; in the centre the floor was twenty-eight or thirty feet; in the way it, was kept access was free to persons from the street to go up to the second floor: the stationed lights were the ordinary tin sconces with long tin backs.

Cross examined—Don't know that they kept a watch to keep strangers from going up; the lowest pulley on the main shaft was about forty inches diameter; -here was one of that size on the main shaft, and one on the intermediate shaft; the tightening pulleys were ten inches in diameter; one of the latter was the one near the bin; there was a floor and only one to the cupola; that floor was about two feet above the ridge of the main building; some ot the machinery was above this floor; some of the pulleys were; there was a tightening pulley fixed on the floor the same size as the others, and with the same kind of boxes; it was fastened on a frame and the frame fastened on to the floor; the velocity of that pulley was from one hundred and sixty-five to one hundred and ninety; it was near one side of the cupola, perhaps two feet from the side north; there was also a couple of wheels and shafts above said floor, iron wheels, one shaft extended nearly across the room; it was three inches in diameter.

The cars used to go in and out occasionally in the evenings.

Don't know that the Company were in the habit of storing goods extra hazardous, I think not; dont think there is any probability of fire having taken from friction; were it not properly taken care of I don't think it could have taken fire from the machinery; don't think it could under any circumstances.

Direct resumed—Generally passed from the second story to the cupola by stairs; no door between the second floor and the cupola; usually freight trains were pushed out and drawn in by locomotives; frequently trains were longer than the building; was often there after the machinery was put up; never knew of fire taking, or of dan-

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ger from sparks; roof inside white-washed so that would be protection from sparks; on engines they have spark catchers of fine wire with openings less than a sixteenth of an inch square; never knew of anything in the depot taking fire from those sparks; the apertures were not over the track, and they had trap doors with which they were usually closed; whenever cars come in employers were round.

Re-cross examined—Don't remember the boxes ever getting heated; I frequently examined the machinery after it had run some time and never found them warm: have so examined the pulleys in the cupola.

Francis Mahew sworn—Reside in Detroit and am a carpenter and joiner; have worked for the Railroad Company about four years; I assisted to put up the machinery in the old depot; I know the construction of the shaft—its journals were in composition metal; mostly all were in composition boxes; the evening before the fire I was at the depot; I was at work at the wheat house; was there till six P. M. the evening before the fire; I was not in the depot but was round the premises; I should judge the machinery did not run fast enough to heat the boxes; I have put my hand upon them when running to ascertain, and they were not heated.

Cross examined—I so examined them two or three days after they first run, and it had been running an hour; I examined them again a day or two after when it had been running one or one and a half hour; I examined for curiosity to see if it got hot; did not examine it after; don't know how many pulleys there were; I helped to put up three; guess there was only one pulley in the cupola; cupola was oak iu the big timbers; boards were plank; floor in the cupola was pine; think two 1 inch boards; was there the morning after the fire; the second floor was burned up; went there about seven A. M. the next morning.

Resumed—Mostly left but the naked walls and a few big timbers at one end; all the beams of the second floor were gone.

Edwin Ives sworn—Reside in Detroit; am a a mill-wright; worked in repairing the old depot machinery. was here at the time of the fire; was then employed on the machine of the lower wheat house; have worked at mill-wright business eight or nine years; had been frequently in and knew somewhat of the machinery of the old depot; have had charge of such machinery, flouring mills and elevators in my business; as far as I looked the boxes were of cast iron.

Supposing the pulleys to revolve two hundred and fifty, I should think from my experience that there was no possibility of the fire taking from them; I think they could not generate fire whether oiled or not; I consider it one of the safest I ever was acquainted with; have put up three sets of elevators in Buffalo myself: not positive but think I have seen sconces hung up on posts; never knew of fire having caught in the building; never heard any of the hands say aught of heat in the journals.

Was at the fire; when I saw it the cupola was just tumbling in, about two or three A. M.: when I first looked out the fire was in

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the cupola and beginning to extend; I went down and went into the lower part of the building; no fire below, only smoke from above; I went on the lower floor near to the centre of the building under the cupola; the fire was all above; no fire below at all that I saw; I entered the building at the lower end; it seemed to me to burn slow.

The building was white-washed inside; I think that would be some protection from sparks.

Was in the building sometimes at night: don't know that I ever saw a watch.

Cross examined—Don't know whether they had been elevating wheat the night of the fire, nor what hour the doors were closed that night: was not first at the fire: was at my boarding house a quarter of a mile from the depot: was asleep and awoke by the cry of fire: fire had not commenced on the roof when I first saw it: from outside it appeared to be entirely in the cupola; I don't know but I could have gone farther than the center of the building if I tried; I went in to get out the cars, &c.; helped to get out the cars; they seemed loaded; don't know if this night there was any thing but machinery in the cupola.

Resumed—When I went into the building if the hatches had been open I would have seen the fire through them, but saw none.

The examination of witnesses, in court adjourned till the 7th at 9 A. M., and the Jury discharged till then, for the purpose of hearing an application for bail in the case of Gleason.

No application having been made for the bail, Court adjourned to the 7th of June at 9 A. M.

FIFTH DAY.

SATURDAY June 7.

Solmon Wood—I Reside in Detroit; I run a stationary engine; that is my occupation. I remember the fire at the depot; was then employed running the engine in said depot. I run the engine at night. *That night it stopped a quarter before 12 at night. The fire, before I left, was let run down; the engine was pumped out or up and everything secured.* To my knowledge, it was not run again that night. Do not recollect that any *locomotive came into the building that night.*

Cross examined.—The engine was run for elevating wheat and flour that night from the cars. The engine had run from 7 in the morning to 6 in the evening, and then from 7 P. M. till a quarter before 12; stopped one hour at noon: I left depot a quarter before 12: think the outer doors of depot were not closed when I left: I was not about the 2d story that night, Daniel Stewart had charge of the men elevating that night: can't call the men by name: don't know whether cars came in or went out that night: know what lights were used up stairs: when I speak of elevating, I mean from the cars to the bins.

I believe they were not loading a vessel that night nor during the day that I recollect: was not my business to do sueh: they may have been loading a vessel during the day.

Re-examined.—Engine was near centre of building, and to one

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side, enclosed by brick wall: was north side of building: engine about 18 horse power; I had been runing engine about 3 months: over engine was lath and plastered: had no call at all in the upper rooms: I went up once or twice to see how journals worked: when I looked engine had been running 2 or 3 hours, or more: would not go for such purposes till the engine had run enough to create heat, if at all: if at all, it would be in 6 or 8 hours it would create heat: when I so examined, the boxes were not hot: think journals were in soft metal boxes; (Babbitt's,) no part of building was ever on fire while I was there: I was about 3 months there: I was some distance away and was not at fire till about 6 A. M.; from 6 to seven the engine was still: if the journals had been heated, an hour would be very nearly sufficient to cool journals of their size.

To Jurors.—Wheu I examined, it was a month before the fire, or more: I was not sent to examine by any one: a jar in the engine was the moving cause for me to go up to make it run smooth: from my examination did not apprehend the least danger.

John W. Brooks.—Reside in Detroit: am Superintendent of the M. C. Railroad, and have been since the fall of 1846: I drew plans of said depot: the building belonged to M. C. R. R., and was directed by them under my supervision: not all detail under me but general outline was: I have been acquainted with such machinery for 8 or 10 years, and have attended to and put up such machinery: I have superintended and changed the speed of this machinery: at time of fire this machinery had been running about two years: during said time my practice was to go through the building four or five times a week: I often calculated the speed, my familiarity with such machinery enabled me to so calculate; the velocity of the greatest speed was on small tightening pulleys, which ran 240 to 265, but its journals being smaller, did not traverse more or make quicker motions, or more friction than any other part of the machinery: the frictions in the journals of this pully was less than others, because smaller and less weight than others; the journals were of Babbett's in harder metals: the quality of Babbett's metal is to prevent heat: in my experience never knew it to heat: it was the intention to have all journals in Babbitt's, but can't say from actual knowledge that all were.

To Jurors.—From my experience the Babbitt metal will melt and run out before it will heat the journal: we never had one melt so, therefore cannot speak with certainty, but this is expected to be the first sign of failure.

To counsel.—The machinery was ordinary with very little weight: the friction would be in proportion to weight: I have examined the journals several times: can't remember their being ever heated: when I made my examinations it was at times when it had been running sufficient time to heat, if at all: I usually examined late in the afternoon or evening: never found them heated at all: from my knowledge of machinery, don't think they would have heated, even if not oiled: were slow moving journals: value of building and fixtures about $80,000: I refer to what was destroyed, not including foundation: I should certainly know if fire to any extent had ever been communicated from engine sparks: never knew of any such: from my

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knowledge of this and other machinery, think not the least danger of fire from friction: have put it up again in the same way, as to the upper part of the building: up stairs used ordinary sconces and glass lanterns: latter were used for moving, the former stationary: nothing to prevent egress of persons up stairs and to cupola.

I got to fire when it was in the second story under cupola: there was no fire below: I was in the lower part till almost every thing was cleared out: think I got there about 3 or 4 o'clock, but this is mere opinion: when I arrived the cupola was all on fire: saw this before I got there: the hatches were open on second floor: they are over the platform: don't suppose the sparks from engines could get up there, they are about 20 feet from centre of track to one side, and about 6 feet higher than engine chimney: the cupola was not over hatches, should not think possible that sparks could go from engines to cupola: engines do not throw as much sparks in depot as when in the country running. Never knew of fire from sparks in a depot, have heard of sparks setting fire when running before spark catchers were invented, they are a great protection: the building was whitewashed inside, some inches of mortar on inside of roof, and outside of roof fire proof paint. Do not know if a train came in that night, no regular train did: at that season the trains were usually longer than building and engines pushed them in. There were a number of cars in at the time of fire from the West. I am satisfied no train came in. Our hands varied from 20 to 50: at time of fire there must have been a watchman and some men who slept in the building. Along the road we have 7 setts of elevators of similar character and that move with as much velocity: never had fire from friction in them: some used as long, some less time than this. I never knew of fire from such machinery. We have some that run 3500 and some 4000, I have known them run 5000. Most of our depots are lighted in the same manner as was this.

Van Arman states letters were received and witness will have to be recalled as to the other letters, &c.

I received the letter in my hand, signed Abel F. Fitch, dated October 29, 1848, Michigan Centre; think I received it from Post-Office, it is post marked.

Cross examined—There were side windows in the cupola, about four. We did not insure it, never insure any of our buildings. I had a conversation with some agents of Insurance Companies at one time. From my own knowledge I think this building would have been regarded as less than hazardous: wooden buildings generally would be more hazardous: if the machinery made any change it would be to make it more hazardous, such is generally the effect of machinery in a building. We took all the precaution we could to diminish the hazard. The locomotive round building would also be regarded as increasing hazard.

I never insured for the Company: about 50 lights, 8 by 10 in each window of the cupola: no lights in roof of the cupola. 2nd story of main building lighted by lights in roof, more than 20 of them, less than 40. Cupola not plastered inside; floor of cupola was above ridge of main building, do not know what it was of. The main walls

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of the building were from ground eighteen, or seventeen and a half, to eaves, the ridge, perhaps twenty-six or seven higher; cupola was about thirty feet square, boarded up outside with pine boards, I think about one and one fourth inch boards. I was not there late in the evening before the fire, do not remember how late. The depot at Ann Arbor, I have heard was burned before the Company bought the road. I may be mistaken as to size and number of lights in the cupola. I think they were high and above reach from the roof outside: do not know if they were fastened. I do not recollect of any fire at the depot at Jackson in '47: any slight fire might be without my knowledge if no material damage was done.

Resumed—Engines increase hazard, but we took such precautions as to avoid the extra hazard we undertook to and I think did so. I do not think the locomotives materially increased the hazard: I think it was much safer, engines, locomotives and all than if cut up into stores and each with a fire.

Witness identifies the Co. as same mentioned in the act of 1846, and now put in evidence.

At time I went in where the fire was going, saw no fire below or about the engine. the ceiling of the engine room was one foot thick, and filled in between joice with brick, and grouted; generally windows in cupola were kept closed, but if much dust, when men were there, somtimes opened.

To Jurors—The hatches were open: the custom was to leave them open: I looked through them and saw fire, perhaps fifteen minutes after I got in: when I first saw fire it was in the interior of the cupola.

To counsel—I think for goods the rates were lower for insurance n the depot than any store in town, save the fire proof one at the foot of Woodward avenue.

To Jurors—In some cases locomotives ran into the build.ng but, not ordinarily; ordinarily would not go in to within 300 fee[1]t of under cupola.

Hallock, juror, asks—Did you express any opinion at times as to origin or cause of fire.

Seward objected.

Van Arman argues juror or court has a right to put any question competent on chief or cross examination.

Fraser, for prosecution, waives insisting on the question.

Cross examined—Don't know whether vessels were loaded or not that night: would not know: windows to 2d floor were on both sides of roof alternating.

SIXTH DAY.

MONDAY, June 9th, 1851.

Capt. James W. Turner—I reside in Oswego, New York: I am a sailor: recollect the burning of the depot of Central Railroad last fall: I was laying in front of depot at time with schooner Odd Fellow, of which I was master; was lying in front of depot at the Railroad wharf: I saw the fire: I had been taking in flour, and had dropped down there to take in flour: I went on board my vessel and read

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newspapers till about 10 P. M. evening of fire, then slept on settee till 11 P. M., then went to state room : about 2 A. M. waked by vessel touching us, and went up on deck : some were talking of fire : I looked up and saw fire then very small : some said that it was not fire : I said it was, and roused up my hands : I saw a few buckets would put it out : looked, but saw no way of getting up on building : than ran up to Johnson's Hotel and called fire : then went to Savinac's, who I heard was a fireman, and I roused him : when I first saw it, the fire was in cupola, and about the size of a half bushel : think it was higher up than the ridge of main roof : smoke was small, and fire seemed confined to one small point : afterward extended very fast : about 2 A. M. when I first saw it : my 1st mate was ashore and came on board and turned in about 12 o'clock.

Cross examined—Had not been loading my vessel at Railroad depot : there were vessels below me, but don't know if they had been loading : fire was I think above roof of building in cupola : there were 5 or 6 men on deck when I saw the fire : depot is about 40 or 50 feet from water, and no building between.

To Jurors—Think fire was inside of cupola ; I lay about one-third way down the building : my stern was not quite down to cupola, but nearly so : I did not go into depot, it was closed and I could not get in : would if I could : after people came, went in below and saw no fire below : then I went in at another end.

To counsel—Also went in after people came, and doors were opened to get things out.

John B. Cochran—Reside at Marshall, Calhoun Co. : my occupation has been on Railroad several years : season of 1850 lived with a man named Holden, one mile or three-fourth south of Michigan Centre ; I lived there from 20th August to 20th October : day time worked on farm ; my object in going there was to act for Railroad, protect its property, and try to find out who caused engines to be thrown off track, &c.

W. H. Seward objects, and asks that portion of the answer struck out which shows engines to have been thrown off.

Van Arman contends that the Prosecution can show acts of destruction of the Railroad property, in accordance with the general intent and combination to destroy the property of the Railroad Company.

Seward—Don't intend now to discuss the general question raised by Mr. Van Arman.

Van Arman—We agree for the present to strike out the part as to the cars having been thrown off.

Witness—I remained off and on to the 20th of October about the Centre ; my business was to protect property of the Road ; my nights I spent where I thought I could learn the most ; sometimes at one fence and sometimes at another ; I was three or four times a week at Filley's tavern ; I saw persons there, the number generally varied from six to twenty ; among those I was in the habit of seeing, I have heard their names called there ; seldom was light in the bar-room where I saw them ; sometimes there would be more and sometimes less of them there ; I heard some of their remarks.

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What were they talking about?

The question was objected to by defendant's counsel.

Van Arman for the Prosecution states that they will proceed to show that the persons who so met were some of the defendants, and that their conversation was about the Railroad Company; and will show by other witnesses that what they said was that they had banded together for the purposes stated in the opening, *i. e.* for the destruction of the Railroad, and to burn their depots if they could not otherwise effect their object; an agreement to pursue a series of offenses of which the burning of the depots was the last.

Mr. Frink argues that the indictment is for a single offense, and the prosecution cannot prove other offenses, or go beyond proof of an agreement to hire Gay to burn the depot mentioned in the indictment, and cites, Roscoe p. 81, 2 Russell on crimes, p. 701.

Mr. Van Dyke for prosecution—The indictment now before the court is for the single offense of burning the depot at Detroit; but it is competent to introduce evidence tending to show the existence of a conspiracy generally to injure and molest the Michigan Central Railroad Company; and embracing within it the design to do this particular act now charged. The fact that the proof of such conspiracy embraces other facts and offenses is no objection—if they all spring from a common design—a grand concert and plan—and are continuous in their nature. Wherever principal and accessories are charged with a crime, it necessarily involves the existence of a combination and conspiracy among them. And the doctrine of conspiracy here is applicable and competent to prove the design of the defendants, to raise a legal presumption against them, to show the possibility that they are the guilty parties, and to give the full history of the whole transaction, from the beginning of their design to the consummation of the act for which they are now indicted. Cited the following cases:

1 Greenleaf on evidence, 54a58; Starkie, 51, 56a58; 1 English Crown cases, 531-375; 13 Cuy C. L., 123; 4 Greenleaf's Rep., 172; 4 Boss and Puller, 20; 12 English C. L., 105; 25 English C. L., 343; 6 City Hall Recorder, 43; 1 Starkie on evidence, 499; 2 Starkie on evidence, 222.

Mr. Fraser, on the same side—It is competent to show the original combination, and acts in furtherance of it down to the burning of the depot, to give a full and complete history of the entire. To show the character of the transaction, to prove the identity of the prisoners and connect them with the commission of the crime. Also, to corroborate the testimony already produced, and to establish the hostile feelings of the defendants. All these tend to prove the issue in the couse. And cites:

2 Hawkins, 619; McNally's evidence, 346; 1 Boss and Puller, 93; Archibald's crim., p. 110-109; 1 Philips' evidence, 180; 3 English C. L., 282-400; 24 English C. L., 253; 9 Pick., 518; B. & A., 573; 11 Wend, 73.

Mr. Seward, for the defence—To the general rule that proof cannot be given of other offences than the one charged, there are but two exceptions.

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1st. Where the acts offered to be proved are a part of the *Res gesta*, not remote and distinctly referrable to the matter in issue.

2d. When introduced to show *scienter*, or intention.

All the casess cited by the prosecution come under one or the other of these exceptions.

The acts offered to be proven occurred at different times and places, and under different circumstances, and cannot come in until they are shown to have been done in furtherance of a design to burn the depot mentioned in the indictment. Cites Roscoe, 88; 2 Burr's trial, 426.

Court—As submitted by the argument, the main question is whether the prosecution can show repeated and separate acts done under a general scheme to compel the Railroad Company to comply with the terms of the defendants. I am of the opinion that it is competent to prove all acts done under the general scheme, and in furtherance of its designs. Under the supervision of the counsel and the direction of the court the case will not be prejudiced by allowing all acts done under the general scheme to go to the jury.

SEVENTH DAY.

TUESDAY, June 10th, 1851.

Witness Cochran resumes—I have stated I was in the habit of going to Filley's and meeting and seeing persons there.

Mr. Seward objects to this witness telling what was said unless he can identify the persons who were there.

Mr. Van Arman pledges himself he will identify the persons by another witness, though this witness cannot identify them, and urges the convenience, almost necessity, of taking the proof a little out of regular order in a case like the present.

The Court—The great necessity upon which courts take testimony out of the regular order does not appear to exist in the present instance.

To witness—Did you see Mr. Wescott at these meetings?

Objected to as leading.

Van Dyke and Van Arman argue names are an exception to the general rule. C. and H. Notes to Philp. Ev., 722, 3 and 4.

Court—The question is leading.

Witness—I was there from the 20th of August to the 20th of October, 1850. I have seen Mr. Wescott, Mr. A. F. Fitch and Ammi Filley at those meetings; don't know as I could recognize any others, but heard persons there called by name. Heard the name of Williams called there; can't say if any one answered to it; it was in Filley's bar-room, and there was a good deal of talking and drinking. Those I have named, save Williams, I have seen more than once there; used to see them three or four times a week there. On one occasion I was refused a light. I called for a glass of liquor, it was set on the bar for me, I asked if they couldn't afford a light, some one replied they could not. There were half a dozen of them there then.

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I was a stranger, not acquainted wfth the people of the neighborhood; don't recollect who was there that night; I could not tell one from another, not even the one who handed me the liquor; I cannot specify any one meeting at which Fitch and Filley were present; I don't know that I can state particularly the matter of any conversation while I remember Fitch and Filley to have been present. The meetings when Fitch and Filley were there sometimes broke up in good season; sometimes they held till 11 o'clock; sometimes they assembled early in the evening; I never could get near enough to them to get the run of their conversation; generally talked low when I was around; have seen Wescott at the meetings frequently; don't know that I ever saw Wescott with any of defendants, save round Michigan Centre; have seen him in the streets evenings with a crowd of citizens round the Centre, and at the meetings at which the defendants were present; the persons there talked in clusters; I never could get near enough to tell what was said; when I approached they talked some nonsense, yarn or other; theíacted cool and quiet and started some subject when I approached.

I have at nights watched along line of Railroad track, and have seen persons approach at night; frequently have seen persons walking along and beside the track.

One evening during the time of State Fair at Ann Arbor, in the forepart of the evening, I placed myself where I could see the movements round: I saw a couple of men come out of Filley's bar-room and cross over the track, and as they crossed over they spoke of widening the track; they crossed over and came down east side and went out of my sight: I lay there about two hours and saw another man coming from the north; he walked back and forth over twenty or thirty rods, and after a while a second man joined him, (this was 9 or 10 P. M.,) as they came near me heard them speak of a certain wheat buyer, and walked back again out of hearing: I heard cars coming from the east; when I first heard the cars the two men walked back north; when cars passed, they came back again, and a third man with them, who came from Filley's ball alley or orchard with a gun and bayonet,and all three came up to the track; one of them said "they run so slow we can't do any thing." Another replied, if we can't do auy thing else we can stone them like hell; then the one with the gun said if I could see one of the d——d railroad spies I would spear him d——d quick. There was not much of any thing more said that I heard until we heard the cars get into Jackson 3 or 4 miles off: heard the cars leave Jackson and cross over the bridge, then one of them said the cars from the west are behind, and I will go home: then the one with the gun and one of the others crossed over the track and went east, and the other went back north perhaps 30 or 40 rods when I heard report as of two pistols: I was within about seventy or seventy-five feet of them when I heard the conversation: I was on south side of track, in corner of lot where there is an old house near Filley's: I could not recognize the persons. This was in September, 1850. I have seen persons at other times along line of road; I know some and most of those who were grading the road; have seen others besides them; have seen them along in the

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evening near Michigan Centre and down to the marsh: have not seen them late in the evenings: did not see them do more than pass along on line of road; once (but can't say if it was intended for signal or not) the night I saw the man with the gun, the first one gave a whistle very peculiar, began with a sort of tune and ended with a sharp and shrill whistle: there was no reply that I heard, but at once after it the second man came up.

Cross examined—I have been on the road 8 years last month, save a short lapse of three months.

Re-examined by Pros.—There never were threats to me personally, nor did I hear any save the night I saw the man with the gun, against spies generally.

Cross-examined—I am engaged at present on the road by contractors, but not directly by the Company: before I went to Michigan Centre, as above, I was employed in a gravel pit; I boarded about a mile or three-fourths mile from Filley's, with Holden: I think Sylvester; boarded there most of the time I was a watch on the road: I made it a habit to lie in watch every night on road, unless too tired: about 20th of August to 1st September, I first knew what was Wescott's business there; I can't say how many of us were employed watching there: Filley's was a public tavern, and the only one I knew there; there was a store and a post office there; I saw persons round the post office, as in other places; think I have seen unusual crowds at Filley's, and they centered there every evening as is not usual in such places: I do not profess to know all who were employed by Railroad Company as spies or otherwise round there: can't say I know the persons who made the meetings, were citizens of that place: a man named Dixson was in the employ of the Company; don't know his given name: I was a spy, and so was Dixson: I also saw a man there from Jackson, in the employ of Company, and another from Jackson with him; and others who were off and on; one was named Van Allen.

The night I called for liquor, can't say how long I had been there; it was a man who gave it to me: can't say who was in that night, could not distinguish any one, it was dark.

All that was ever said to me about compensation, was, I was to have the same wages as I had on the road, 12*s.* per day; don't know that Filley had some men employed building ball alley: one Dexter and his son were the only men I knew around there: during day I worked on the farm with Holden; I had hired out to Holden by the month; it was my business to learn all I could; never received any direct instructions to watch any one in particular; I watched Fitch and any one I suspected; my attention was directed to no one in particular; I watched any one I suspected or even heard of being connected with injuring the Road: Fitch, Filley, Corwin and Williams, were ones I so heard of and watched.

The night I saw the man with the gun was not the first night of the fair, but the fair had not closed; can't say that it was second night of the fair; don't know when any of defendants resided at Centre; Fitch and Filley lived there, and Corwin a part of the time; don't know where Williams lived; Fitch's business I can't

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state with certainty, think he pretended to be a farmer; heard he was one, but don't know of my own knowledge; the place where the three men were is where the highway crosses the track; the railroad runs east and west, the highway north and south. When I saw Fitch the first time to know him it was at Filley's, where a letter that made some fun round was by request read by him; saw him afterwards perhaps eight or twelve times; Fitch lived across the street from the tavern; the night I first saw the men the moon was not up, but afterwards it was bright moonlight.

Re-examined—Witness recognizes Filley and Fitch among prisoners; does not, and would not if I saw him, recognize Williams; it was over one hour after the first man came before the three finally separated.

To juror—Filley kept public house; it was a frame house; don't know the number of rooms; the first time I went to the Centre I was, and save then never was in any part save the bar-room; it is a large house; more than one room on first floor; never saw these persons save in the bar-room; never found or knew anything of the pistols I heard fired that night.

Peter E. Demill—Examines the letter shown him, and says he is acquainted with the hand writing of A. F. Fitch, has seen him write, this letter is in in his hand writing.

Van Arman proposes to read the letter.

Seward objects on the ground that the *cvrpus delicti* is not proven.

Court—Letter may be read.

Seward—Note exception, and also exeeption to each portion of the testimony of the last witness.

The letter is read to jury, and is as follows:

"Michigan Centre, Oct. 29, 1849.

"J. W. Brooks: Dear Sir:—Almost every day some persons wish to take passage on the cars at this place, but the trains refuse to stop for them. Yesterday Mr. G. C. Chatfield, mother and sister, wished to take the cars for Detroit, and gave the usual signal, but no notice was taken of them. Now if this policy comes from you or your legal advisers, as did the insulting half pay proposition for killing cattle, if serious accidents do occur on the road, on your head, and yours alone, must rest the responsibility.

"Yours, &c., ABEL F. FITCH."

George W. McMichael—Resides at Spring Arbor; knows Wm. Corwin, who, before his arrest, resided some where near Leoni; Leoni is about twelve or fourteen miles from Spring Arbor: he had some conversation with me about the property of Michigan Central Railroad first in the month of September last, in the village of Jackson, back of Morrison's grocery; he wanted I should go in with him and help to tear up the railroad track; he also wanted I should help him to set fire to the depot of the railroad at Jackson; he said we should be well paid for doing it; he said Fitch would pay us; he said he wanted to injure the company all he could, that they run over cattle and would not pay for them; did not state if any others were engaged with him; he spoke to me of it three different times,

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each time soliciting me to go in with him to do it; he said we would make more at that than at working; once or twice he wanted I should go with him to his home; I have known him three or four years; have known him intimately; no one right by at either of the conversations, but think they were heard, as a man subsequently spoke to me of the conversations.

Cross examined—Have lived at Spring Arbor about seventeen years; am a farmer: carry on a farm with my father; am twenty-four years of age last September; can't say what day in September I had conversation with Corwin; don't know what brought me to Jackson that day, think I went after iron; I lived once at Jackson, lived there about three weeks a year ago last fall; was selling liquor on my own account at the Astor House; don't recollect when I first become acquainted with Corwin; have known him three, four or five years, or more.

The first conversation was, I think, in the afternoon, about two or three o'clock; don't remember where I first met him that day; I had seen him round at different places and had been with him that day; we met in Morrison's grocery, and he asked me to go out with him, and we went back of the grocery; have no means of fixing the precise day; I saw no one present; the man who subsequently spoke to me of the conversation is Wescott, Morgan Wescott; don't know as I ever had any confidential dealings before with Corwin; it is seventeen years since we moved to Spring Arbor, but I have been away sometimes; think in the spring of 1848 I was in Mexico; I was gone nearly two years; went in the spring of 1846; after my return I saw Corwin within a few days.

Our second conversation was in October: in reply to the first I said I did not know, I would see about it: we went back of he grocery talking of one thing or another: he introduced the subject: wanted I should go home with him, tear up the track, burn the depot, and we should be paid for it, &c.: he then lived somewhere near the Centre: I said I was busy and could not go home with him: I was busy in my blacksmith shop: I did not ask Corwin how much money he would give me: don't know how long we were back of the grocery, not over half an hour, I think: have given all I recollect of that conversation, but we talked first of unimportant matters, did not say when I would answer him: don't know as I gave him any encouragement: I did not say I would or not: said I would see about it: don't know where he went when we separated: think I went home coming out by the side of the building, and think he went into the grocery: the conversation was close by the side of the building in the rear: the building extends I think six or eight rods back: did not notice a fence round the yard: I think there was none: think there is a barn down back of it: did not notice it particularly, think it is boarded up and unpainted; we went out of the front door and down the alley to the rear of the building; I was from home pretty much all that day; think I took some iron home with me; think the grocery is painted green or brown; know it is not white; don't know that we went to the rear of the building more than once; can't tell but I think it was the last of September; am not certain but I think

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it was Saturday; I bought iron of Degraff, if any: my residence is about seven and a half miles from Ann Arbor; don't recollect but I think I got a ride home as I generally did; there are teams from Spring Arbor there nearly every day; during fore part of September was engaged in the shop rented by me near father's place. From this to the time of the second conversation I was round Spring Arbor.

The second conversation was in the same place as the first, back of the grocery in October, in the fore part of the month, I think before the 10th; can't tell the day of the week nor the time of day, somewhere about the middle of the day; went this time also out of the front door of the grocery and down the alley to the rear; same said as first time; he began by asking what I thought about what we had been talking of before; I said I didn't know, I would see about it; we were not this time more than eight or ten minutes there; we were before this a little while in the grocery together; he had no other business with me either of these times; don't know what was my business in Jackson this time, think I was after groceries; sometimes I bought groceries of Williams, but don't know as I did this day; can't recollect my business this day, generally went after groceries or iron; think I rode down but don't recollect with whom; I got to Jackson at nine or ten A. M.; don't know what time I left or got home; think I got a ride home but don't recollect with whom; Corwin had on a straw hat, don't recollect his other dress; generally was in his shirt sleeves; didn't see any one else at either conversation; don't recollect that we talked of any think else that day; don't remember if I drank with Corwin that day.

The third conversation was a day or two after the second; I saw him by Van Allen's grocery in Jackson; don't recollect my business there that day or who went with me to Jackson; our conversation was in the back room of the grocery; there was a number in the grocery when we went into the back room; Van Allen and Pearson, I think, were in the grocery when we went into the back room; he said he wanted to know "if I was going into that with him," that was the first of the conversation; I said I thought I had better not, I was going away, and he told me to keep it still; did not tell him where I was going to; I was going to Brooklyn in the same County: don't recollect but think we were not over five or ten minutes in the room: I met him at Van Allen's, and it was not more than a few minutes till we retired to the back room.

Westcott spoke to me of the conversation with Corwin; Westcott now lives near Clinton; the next who spoke to me of it was Mr. Holden. Westcott wanted to know who it was that was talking to me; this was in Jackson and before the second and the last conversations, and within a day or two after the first; my memory is pretty clear that the second and third conversations were in the fore part of October; Henry Holden is the one I mean; It was about three weeks since he spoke to me of it; I had never talked to any one but Westcott about the conversation till then; Westcott began by saying he had heard it and I had better get Corwin not to go into it; I didn't

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tell Corwin anything of what Westcott said or that he had overheard; I said to Westcott I wasn't going into it and it was not worth naming; don't remember when I was first notified that I was needed as a witness, but it was by Holden; I first told the conversation to Holden about three weeks ago; never have been and I am not now in the employment of the Railroad Company; Holden is the man who sent for me—no subpœna; did not pay my expenses or promise, nor did any one else; don't recollect of being out of Jackson till I came here since my return from Mexico, save last winter when I was in Tecumseh.

I know Wm. Gunn, one of the defendants.

Seward notes exceptions to the testimony of the last witness on the general ground decided yesterday, and also on the ground that the corpus delicti is not proved.

AFTERNOON SESSION.

Henry Brown sworn—Reside in Jackson: know Abel F. Fitch, Ammi Eilley, O. D. Williams, E. & R. Price, Lyman, Willard and Erastus Champlin, Wm. Corwin, Jack Freeland, Ephram E. Bennett, Dr. Moulton, Jacob Tyrrell, Grandison Filley, Abner Grant, Lyster Penfield, Wesley Walsh, Minor Lacock, and John Ack r-son.

Witness here identifies the prisoners as the persons he has named.

In April, 1850, became acquainted with the most of them; was then living with Ammi Filley at Michigan Centre; now reside in Jackson village; went to live with Ammi Filley in April, 1850; I lived with him about two months: was employed to work generally for him; he then kept public house; frequently saw those persons meet at Filleys; could not identify the times, but they met often; snmetimes in the day time and sometimes at nights; at uights they would generally stay till 10, 11 or 12 o'clock, and some would stay all nights at times; Fitch never stayed all night; Welsh I have seldom seen at Filley's; Moulton and Penfield were not so often there as the others; Ackerson was not there generally at the time of meetings; came as any other person; the others met there habitually and often.

There was a general topic of conversation.

What was that topic?

Seward asks to confine the answer to some particular meeting.

Question withdrawn.

Have heard Filley speak of R. R. Co. at these meetings; have heard Filley say that he could have no feeling or sympathy for this company; heard him say that people who traveled on it had better be cautious, they had been warned not to travel on it; have heard threats that they would let them (the company) know there was a God in Israel; they did not say particularly how they would let them know it; have heard Jack Freeland, Mr. Fitch, and Mr. Filley say something about God in Israel; have also heard them speak of the dry marsh; have heard them say, Mr. Filley in particular, that the dry marsh would be a good place to let them off the cars; they allowed it would be a good place to let the cars run off.

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Freeland, Fitch and Filley said they had warned persons not to travel on the road; don't recollect they said anything in particular of hand bills, but said they had warned them; they said they wanted the road pay up for cattle killed, &c. The persons I have named, talked the above matters freely among themselves, but shut up before strangers; when they have been talking so and have seen others coming they would not continue the conversation if the new comers were not connected with them.

Did not hear Fitch or any one say the lengths they would go if the company did not come to terms.

Have heard Filley say, as far as they were concerned together, it was their wishes not to reveal the secret; his words were thus: If any one of them should betray them or come out from them, they meant to stick together, and if they found any spies they would move him so he could not watch as spy or anything else; heard this two or three different times; have heard the same threat from Freeland, Jack and Ammi Filley; others were present; recollect Fitch was present at one time, but did not say anything about the largest number assembled; don't recollect, sometimes seven or eight, sometimes nine present at a time of these threats; there were generally more in evenings than in day time; have heard Filley say he had tools calculated to tear up the track; one time, speaking of the road, Filley said (alone) to me, if we were a mind to go to work, he had the tools; one time in the evening he proposed to me we might go down and go to work on the track below his house, east of his house; did not say more particularly than to work on the track.

This was late on Saturday night, ten o'clock or after; my reply was, I had no interest in it; he then said to me to say nothing about it. While at Filley's I found a couple of bars under the stable floor, one a claw bar used to draw spikes out of tire, the other a heel bar for prying up auything, used on Railroad to lift bars in taking up track. I after saw the same or similar bars on the edge of marsh, (dry marsh); they were close by the fence, under grass, on Filley's land, same kind: can't say if they were the same; first found them concealed under the floor of the stable; those under the stable floor were moved before I found those near dry marsh, heard Jack Freeland once say there could be a plan fixed to blow the cars up; this was when he was dropping in clover seed on Filley's hill. Joseph Wells and I were together when he said so. It was thus: To conceal powder so fixed it would explode when the cars run over it; he said this was a plan talked of, and that it could be done at the dry marsh; he said he knew it would work, and when they passed there it would blow them off the track.

Cross examined—Began to work for Filley on the first of April, 1850, and quit last of May; by meetings, I mean they gathered at Filley's; they met in number from five to six, not always the same men - bar room open to all; it was there I generally heard the conversation; can't say how often Fitch was there; it was frequently; Filley is his brother-in-law; have known Fitch to stay to ten or eleven o'clock; I can remember instances of his staying over a few minutes; can't state the evenings, but several times he stayed till

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ten o'clock; Filley's house has several rooms below; a bar room, kitchen, two parlors, dining room, several rooms in the second story, some large; neuer saw them assemble in the second story; the lights used in the house generally were tallow candles; sometimes the bar room was lighted, sometimes not; as a general thing when I was there the bar room was lighted.

I never had any conversation with Filley about the bars I found in stable and near fence, not with any one else until sworn in Detroit to-day, before coming on the stand, when I made an affidavit at the request of Esq. Wood.

Filley had Wolliver, Wells, and Freeland to work while I was there.

I have never worked on track and never knew Filley to do so.

Am sure it was Freeland who made observations about blowing up the track. Wells said nothing. He said they had a way fixed to blow up the cars as they passed over. I was keen to hear, to see what might be done in such a case. Filley had a large farm, don't know how many acres, he was a good deal engaged in hunting birds, and had men engaged preparing them for the Detroit market; some of these men were at the meetings; Filley never offered me tools to injure the railroad, or told me where to find them, nor did any of the defendants.

Don't know how far Williams lived from Filley; it is three and a half miles; can't say who was present when Filley said he had no sympathy for the railroad; he and I were there, and others whose names I can't call, as I don't recollect particularly.

Can't say if it was that or another time, it was said, they would let them know there was a God in Israel; three of them said the last thing at different times; did not hear all say it any one night; the remark of God in Israel was made in the bar room; heard Freeland make that remark in a number of different places; can't specify that Freeland, Eben Price, or Williams was there when Filley made that remark, or Richard Price, or L. Champlin; can't name any one who was prseent save Filley and myself.

It was on the track where we sat down when tired, that Filley said the dry marsh would be a good place to throw the cars off.

Heard Fitch say one evening in the house, that people had been warned not to travel on the road; not many there at that time, Joseph Wells, Filley, myself and others whom I can't remember were there.

I have seen Freeland there different evenings, more than once; but can't specify the evenings.

The first to whom I mentioned what I knew of any particular occurrence was this morning; before I told them they did not know any thing about it; was supœned to come here by Mr. Wood; I came here, (to Detroit,) not expecting to be supœned; I came to see and trade a littte; I have received money from Clark since subpœned; received three dollars. did not want to stay.

Jacob Wolliver—Reside in Marshall; have resided there since the seventh of September last; before then resided at Concord,

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Jackson County; I once resided at Leoni, in the summer of 1850; resided in Leoni for about eight months, or near that.

I worked for Ami Filley most of the time; I was there some on his farm, part of the time grading on the railroad, and part of the time catching pigeons; know Moulton, Jacob Tyrrell, Abner Grant, Eitch, Barett, three Champlins, Hiram Hay, Grandison Filley, two Prices,, M. T. Laycock, O. D. Williams, W. Corwin, E. Farnham, W. S. Warner, N. B. Lemn, (by sight,) Jack Freeland, Eli Beebe, J. W. Welch, Russell Stone, Henry Showers, John Ackerson, John Ladue, J. Cann, Benj. F. Gleason, and who are the same on trial; some I knew before I went to Michigan Centre, and some I did not; Corwin, Farnham, and Warner I knew before I went to Michigan Centre; I went to work in May, 1850; but have been there often during the preceding winter.

Remember the Fair at Ann Arbor; during that time I lived at Filley's; some of the defendants were in the habit of meeting there; most of them were there often; some of them most every day or evening; sometimes twelve, sometimes nine; outside of defendants, persons seldom called; think the tavern did little outside of the custom of defendants; they came at times three or four together, sometimes more; generally occupied the bar-room; have seen them go in and out of the kitchen; have seen Fitch there generally every day and evening while I was there; they talked a good deal in relation to the Railroad Company; that was the general conversation; not very public before strangers; when no strangers, openly before themselves.

Their conversation was as to taking up the track, injuring the road; that people had no business to travel on the road; they had their property injured, cattle killed, &c.; and if they could not get revenge in one way, they would in another; that the people in this and Eastern States knew of the trouble on the road; they would never give up till perfectly satisfied for damages done the inhabitants of that place; would carry out their object; their object was to injure the Railroad all they could; would stone them, and throw them off the track, and have revenge in some shape or other.

Have seen all the defendants, I have named, at meetings, and where there was such conversation as I have stated; have heard all I have named make such remarks.

They appeared to be pretty well agreed as to the matters.

Have heard them call Capt Fitch's name often; but do not say they were a band, or he their Captain; but heard most of them say they would aid and assist each other; heard Filley, Corwin, Prices and O.D.Williams, and most all I have mentioned say so; it was a general every day remark; heard them say they could not convict them; they were too strong, and would swear for each other and get them clear; heard Corwin, Wm. Price and Filley say they would swear as above stated; this was said in the presence of the others, and all decided they would stand by it and swear each other clear; also heard them say what they would do with the Railroad spies; they considered Wescott and Dixson spies, though not at first; by Railroad spies they meant any one who was watching their movements; if certain of it, they would put them out of the way; knock them over; heard

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Corwin, Filley and Wm. Price say so; it was generally talked among themselves, and in the presence of pretty much all I have mentioned; don't know if Palmer or Warner were present, or Wash when this was said; believe it was said in the presence of Barrett, and he did not appear to make any reply; Doct. Moulton told them to look out for the Railroad spies, for they were watching; have heard him say so often; have heard Chaplins say to the same effect, that defendants must keep a good look out to see who was watching them, and Dixson and Wescott were suspected by them; heard Gleason, defendant, speak of a letter that had been received, containing intelligence that Wescott was a spy; he said there had been a letter written that W. was employed by the Railroad to watch and detect persons living in Michigan Centre; I forget who he said wrote the letter; think he said he saw the letter; said he saw the letter at the State Prison, I think, and from it gathered W. was a spy; don't know that in consequence they took any more measures than to watch him; he, Wescott, was at the tavern almost every day while there; he was not there a great while before they began to suspect him, perhaps a couple of weeks; I recollect on a Sunday I first heard of the letter: Gleason came down in a buggy from Jackson; think some one was with him; don't know who; I was at Filley's when he came up; Eben Price, Jack Freeland, Barrett, Nathan Credit and others were there when he came; it was then I heard from Gleason that W. was a spy; before that some said he was, some that he was not; heard Fitch before then say they had best look out for W.; he thought he was watching the movements of the people; after Gleason came down, heard Fitch say they would have to look out for W.; he believed he was a damned Railroa spy; heard Fitch after Gleeson came, say any damned Railroad spy ought to be shot; heard all the others named, say the same, save Warner, Walsh, Farnham, Grant, Lang, Stone, Hill, Lemn, Myers, Burnett, M. T. Laycock, Grandison Filley, Jacob Tyrell, Barrett, Erastus Champlin, Hay, (not) L. Champlin.

All the other defendants I have named I have heard say so.

Those I most saw were Fitch, Filley, Corwin, Wm. Price, Champlins, at meetings.

Heard Lemn say it was too bad people got property destroyed, they should get compensation, and he would aid them in suits for compensation; don't think he was present when they talked over depredations on the Railroad, but Fitch was, and I heard him (F.) say what he would do if he was in the place of the people who had cattle destroyed; that he would tear the track up; and if he could not get satisfaction in one way, he would in another; heard him say so before others often; it was the great talk in the meetings.

EIGHTH DAY.

WEDNESDAY, June 11th, 1851.

Court opened and prosecution announced the sickness and absence of Fitch, one of the defendants, and enquired whether the trial could go on in his absence.

Mr. Seward, for defendants, said they would consent to have the case proceeded with until the examination of Woliver, the last wit-

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ness called, was concluded, and pledged himself that no advantage would be taken of it in case it was an error.

Mr. Van Dyke said they did not doubt the good faith of counsel in giving their consent, but the question was whether the case was not beyond the reach of counsel and court, whether it would not be a fatal error in case of a verdict.

Mr. Seward said that technically he had no doubt but it would be an error, but he supposed a stipulation of the party and counsel, placed on record, would obviate the error.

Mr. Frazer said if the party, Fitch, and counsel would stipulate and place it on record, as that the record could be made up as though he was personally present, they would go on with the case; which was agreed to, and a stipulation was accordingly drawn up, sent to the jail for Fitch's signature and placed on file.

Mr. Erastus J. Smith; one of the defendants, gave bail in $3,000 to appear from day to day, on account of the severe illness of his family.

James Champlain, not on trial, also entered his own recognizance in $2,000 for his appearance at the next term of court,

Jacob Woliver on the stand, proceeded with his testimony—On the Sunday Gleason came down he said he came to notify them Wescott was a spy; Freeland, Fitch, Filley and others were by when he said so; Burnett was also present; am not acquainted with Miles Barbor; I think Joshua Wells was there that day; whether present when Gleason said so I don't know; Gleason said he wished to notify them so they might look out; Filley said he was a railroad spy and ought to be knocked over; heard Filley repeat the same remark after, and have also heard most of those I have named say the same, that Wescott ought to be knocked over and got out of the way; I know plans were laid for that purpose; it was talked among the men there; they asked me if I thought he was a spy, I said not; some thought he was, some not; they proposed to get him down at a card table in the right position, and dash something through the window at him; at the tavern at Michigan Centre this was to be done; this talk was in Filley's bar-room, and was by the Prices, Corwin, Filley and O. D. Williams; the plan was laid and talked over; I told them they had better let it alone; don't remember that he was invited there for that purpose.

I have known of some of the defendants putting obstructions on the track of the road; recollect when engine Gazelle was run off the track, about 19th or 20th of last August; I was up to Mr. Price's haying for Filley; we boarded at Price's, and Ammi Filley came up and made proposals that we must throw the cars off that night; we went over to Penfield's saw mill and took an axe from Price's; started about dusk from Price's; Ammi Filley, myself and two Prices (defendants) were the party; we went to the railroad; got there about nine o'clock; about one-half or three-fourths of a mile west of Leoni, at a culvert, a mile post near by; we broke the chairs that confine the bars, and moved the track to one side; the train from the east was expected first, we supposed a passenger train; a good deal of travel on the road then; we did it to throw

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off the train from the east; there is a high bank there; the train from the east would fare hardest if it came along; the bank six feet high or more; we then went off forty or sixty rods and laid down; a pretty dark night; we were in sight of train when it ran off; the train from the west came first, a passenger train, and ran off; I did not see the train after it was thrown off, but Filley and Price went over next day and said there was a good deal of damage; after train ran off we went back to Price's; after It ran off Filley and the two Prices said to me, now no matter how many we have killed, don't you speak of it or we will kill you; they have threatened me repeatedly that if I said anything toward detecting them they would kill me; that all could not be taken up, and some would be left to follow me, go where I would.

Recollect law suit at Leoni in Sept. 1850, *vs.* Company, by Barrett, I think; once went up there on foot with Ammi Filley, and he returned with me on foot also; I then lived two miles west of Centre; I was at work for Filley; after we got back from the law suit, Filley and I went down to a culvert west of Fitch's, and put a tie into culvert so as to strike the train expected from the west; fastened stick so it would strike about the lamp of the engine; the train expected was a freight train; also placed a mud sill near by across the track; it was 12 inches wide, 7 or 8 inches thick, and about 12 feet long; we then went back to Mr. Filley's.

I heard Fitch afterward say that he and Filley went down there when the cars came along; this conversation with Fitch was next morning; Fitch said they went down while the cars were stopped, and asked one of the hands what the matter was, the man answered nothing; that he asked another, who said you d——d hounds, every one of you should be hung up; and that while they were remaining there to remove obstructions, he and Filley got on to the train and reversed the breaks; Fitch said to me that was a pretty good trick you and Ammi played last night; he said his object in reversing the breaks was to hinder them getting along; said it did hinder and bother them getting up the grade till they found out what it was; I was not out that night when the cars came along, and don't know what train did pass.

Recollect in September last an attempt was made to obstruct the cars near the marsh east of Filley's. Ammi Filley said to me I want you to go along with me; I am going to give them hell to-night at the east end of the switch; he took his axe and we went up to the east switch at Michigan Centre, at west end of the marsh; this was almost an hour after dark; he said to me you must watch, and he went and tried to get the switch bar loose, but it was spiked so firm he could not get it out; he then pounded it with his axe till one T rail passed the other about two inches; he said if they passed it was far enough, they would go off anyhow, could not get rid of going off; and we went home.

The cars did not run off that night, struck rail and sprung back and saved them; bank there four to six feet high; the rail was set for freight train from the west; that night Filley said his design was to injure the company all he could, and d—d if he would'nt.

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Recollect one night an iron spindle being laid on the track in the forepart of September, 1850, at night, at the first switch west of Michigan Centre; Mr. Corwin and myself went over to Fitch's and got the bar, it sat up against his door yard fence, it was pretty heavy, five feet long, about as big around as a mans' arm; we laid it in the frog, frog is a little open space where tracks cross each other; placed no other obstruction that night; the bar filled up the frog so as to throw up the cars; cars did not run off that night, were thrown up a little but came back on the track again; we calculated to throw off freight train that night; Corwin said to me we will get the bar and run them off and stop them here to-night.

Wednesday about 8 or 9 o'clock, A. M., I saw Fitch; he said you must not take any thing from my house to run off cars with, for they will suspect me; he said take any thing else you find, but take nothing from my house; don't know how he knew what we had done; Corwin and I were talking, and he came out and spoke as above; Josh Wells was absent that morning, don't know if Sherman was, don't know that I know of any other attempt to throw off or obstruct by any of the defendants.

I know of the cars being stoned once, west of Michigan Centre, near Mr. Fitche's, about fore part of September, 1850; just before the passenger train from the west came, the two Prices, Wm. Corwin and myself went toward Fitch's garden, and we throwed stones at the cars, I heard them strike the cars and saw the glass there next day; a good number of stones thrown, heard people in the cars cry and halloo; this time I went at the instigation of the two Prices and Corwin who proposed to go and give them a few stones.

Recollect similar occurrences at Filleys in September some days after the two Prices, Wm. Corwin and myself were there; some of them said the cars are coming near, let us go and stone them; Corwin said we will give them hell again to-night. We went out and stoned them; Richard Price threw out of Filleys orchard, the rest went up the track higher: it was a passenger car, I think it was hit, as there was glass along the track next morning.

Remember another time along in the same month, between Leoni and Michigan Centre. Ami Filley and I were up there and met Corwin and Williams, we went to Leoni and met there on our way home, about half way between the two places, After we met there he said hold on, the cars will be soon along, we will get our pockets full of stones and give them hell to-night. We all went up to the track and waited untill the train came along. Williams and Corwin stayed more East than Filley and I; Williams and Corwin were in the bushes near the track. Filley and I went farther West and stopped; when cars came along, threw stones, and the cars slacked up near Filley and I, and then went on again and were stoned again, and slacked up; heard people halloo in the cars, it was a passenger train going East.

I afterwards spoke with Fitch about these several stonings; he said it was right to give them hell, that was his general conversation in talking these matters over, have heard him say so a number of times. Do not think I ever threw or knew of stones being thrown at freight

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trains. The object in stoning passenger cars was to make people afraid to travel over the road and go the other way, i. e. round the lake. It was so talked, and I have heard Fitch state that as the object, also, I have heard Fitch say it was well known from one end of the road to the city of New York, of the trouble on the road, that it was in print. Have vheard him say he did not care whether people were killed on theroad or not. He said he didn't care a damn how many were killed on the road, they were aware of, and had no business on it. People knew what the trouble was and had no business on the road to risk their lives, they had warning enough.

I recollect a ball at Leoni, I was there, it was I think on the 8th of July, 1850; the cars were stoned that night. I was in the ball room, Lyman Champlin, Eben Price, Hewitt and Davis were there. Price came and said the cars are coming, let us go and stone them, and we four went out. Davis and Champlin went down a little ways farther than Price who stayed with me. I saw Price throw two or three stones, heard stones strike the cars, and people in the cars hallooed; did not throw myself or see Davis and Champlin throw, they were a little ways off; a passing train.

Have heard some of the defendants speak of having witnesses to swear them clear if accused or arrested for any of these things.— Have heard the greater number of these I have first named say so. I have heard Filley, Corwin, O. D. Williams, two Prices, Fitch, Gleason, Lyman Champlin and those I don't recollect speak on the subject of witnesses as above to swear them clear.

Fitch I heard say they could not convict them, they would all hang together, could not get a court that would convict them, they could get witnesses enough to swear them clear if taken; all the others at different times have said the same thing to me. They said they could not get a court that would convict them in the County.

I have heard Corwin and Williams speak of Lesters case.

When speaking of swearing people clear, they named those who would do it; they named John Ladue, Wm. Dunn, John Cann or McCann, Wm. Jenkins. Corwin Williams and Prices mentioned these men for that purpose.

Had conversation with Fitch relative to revealing what I knew of the transactions of defendants in relation to the road at his house just after the State Fair, about the time I left there. He knew I was going; he called me in and said he did not want I should go off dissatisfied, if I was not satisfied, would satisfy me; did not want I should reveal anything, as it would be the ruin of him and the rest of them. He said if not satisfied to go to his barn and take wheat until I was satisfied; he wanted I should go off satisfied and not expose them. I was about leaving the neighborhood, I was going to Albion to work for Railroad Company; he knew I was going to work for Company. Previous to this I had expressed dissatisfaction to Corwin, Fitch and others. I went, in a short time after; said to him he owed me nothing and I did not want his wheat or property without paying for it. When I went to throw off the Gazelle, Filley had whiskey along; I was then in the habit of drinking; usually got liquor at Filleys, most

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of it was not paid for; they used to call one another up to drink and seldom paid, but sometimes did.

After I left the neighborhood I worked at Albion and lived about four miles from there. When there a few weeks, Filley came up to see me and, as he said, to caution me against saying anything of the operations at the Centre; if I exposed them they would kill me; they could not all be convicted if exposed them, and some would be left to kill me. He appeared quite friendly; he had a double barrelled gun and large knife; this was Ammi Filley; this was at Albion, he said his business was to talk to me on this subject, had brought his gun as he might see something to shoot.

Fitch had said to me I would be killed if I should ever reveal anything.

Frink asks note of exception to the testimony of witness on general grounds before discussed.

AFTERNOON SESSION.

Cross examined.—In May, think 15th, first went to work for Ami Filley. Before then had no particular acquaintance with any of the defendants, but had seen and knew most when I saw them.

To Van Arman—Know Wm. Wescott, saw him frequently around the Centre while with Filley and Fitch.

Have seen him at Fitch's house and around with him, appeared intimate, for part of the time was at Fitches almost every day, spent much of his time with Fitch, and have often seen them talking together privately.

Cross examination resumed—Saw defendants, some of them at Filleys before I went to work for him, think I saw some of them there the very day I went to work, and right along after. Think the first day I met them, saw E. Champlin there and also Doctor Moulton; Moulton was a practicing physician, don't know what his business was there this first day, also saw Tyrrell there first day: cannot say if he was there the same time as Moulton, also saw Hiram Hay there, think he boarded there; cannot name any others I saw the first day. Tyrrell boarded there part of the season, don't know if he did that day.

Name the first time you saw any considerable number together there.

They were there often; it was not very seldom that I saw considerable number of them together.

Those who came most frequently were Champlins, Tyrrell and Barrett; Tyrrell was at work for Mr. Shoemaker in a cooper shop; Shoemaker had a flouring mill; Tyrrell continued to work there most of the summer; Barrett was working at making waggons most of the time; Harry worked at the same place and business as Tyrrell; Credit and Grant both lived in the place where Corwin did; have seen Corwin there very frequently; lived one and a half miles or so from tavern; the two Prices who lived three miles off; they were there very frequently in the evenings, they lived east of tavern; when I saw these men at Centre, it was in bar-room I used to see them; used to be in and out a good deal in bar-room; used to do chores around.

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There are several rooms on first floor; think four besides bar-room, some large; have seen these men in other rooms than the bar-room; but generally were in the bar-room; the door of bar-room opened from the street; while I was there Filley sometimes had eight or ten men to work for him, not a great many of defendants ; don't count the others among those who made up the meetings; for some four weeks he had eight or ten men to work for him while building side track which he commenced in June; Fitch I saw there almost every day and almost every evening; sometimes he did not stay a great while, and sometimes he stayed till nine or ten P. M.

The railroad was the general subject of talk ; the cattle killed by it, and the injury to the inhabitants.

Heard Filley say he never meant to give up; also heard Fitch say they should never run over in peace; heard Corwin, Williams, and two prices say it at the same time ; that they would stone cars. &c.; I have heard it said by Corwin, Filley, Williams, and Prices, that they were determined to carry out the preparations they had commenced, till the company came to terms and paid in full for the cattle; heard this every few days, it was the general talk; Corwin never told me that railroad had injured him; never said they did or didn't; bvt said he meant to have the others cary out their plans; don't know that Williams or tha Prices ever suffered any injury from the road: did not see the same individuals every evening; sometime some of them and sometimes others; Filley's is the only tavern in the place; there was very little travel there, and strangers seldom came there, though sometime a stranger did stay there at night; there are mills there; some,but not a great many of those who came to the mill, came up to the tavern.

Name those who made threats?

L. Champlain said they would have no peace running over the road till they gave satisfaction; this was at the tavern where threats were made, they were often speaking of what had occurred on the road.

David Moulton I have heard speak with the rest and say they had better pay for property destroyed, if they wanted to run there with safety; it was in the bar room he said so: E. Champlin had a horse killed by the railroad after I went there.

" Stand by each other."

Have heard that said by Corwin, Fitch, Filley, Williams, &c.

Heard Fitch say so in the street, and in the bar room.

Don't know that I can state the first time I saw Williams at the tavern.

When I first heard any thing said about spies, I had been there a month or six weeks; have heard all of those mentioned speak of spies: think it was Filley first spoke of it: he said they were afraid some men were watching them; Fitch told me the same when I had been there five or six weeks; don't know as Fitch named who he suspected, but in September he alluded to Westcott said he believ- he (W.) would not stay with his father-in-law, who was poor, unless for some object.

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The time when Gleason came down, the conversation was outside Filley's door; Filley, E. Price, Fitch, Freedland and myself, were there; it was Sunday, and Freeland was there; I was not there when Gleason first came up, but was soon after.

"LAW SUIT AT LEONI."

I was not subpœnaed as a witness, but they thought they would want me as a witness to prove about killing of cattle by the railroad; don't know if it was return day of process that I walked there with Filley; think it was adjourned day; saw Fitch there; think it was on second adjourned day that the tie was first put upon the track at culvert; the day the tie was put up Filley and I got home about dark don't know that it was the day a circus was at Leoni; don't remember if that day any one went home with F. I.; don't remember if Mr. Joy, of Jackson was at Leoni that day; think Lem. was; don't know whether Fitch had returned home before F. and myself; think I saw Fitch at his house that night after tie was set; don't recollect if Jack Freeland was at Leoni that day; Filley proposed putting down the tie; the tie lay close to the culvert: culvert not deep; end of the tie was fastened against some of the timbers underneath; culvert not very wide, less than ten feet; I retired before Filley that night: about ten o'clock next morning told him in substance that we had been down and obstructed the track, he said Filley and he had been down after and told about the breaks, &c.; Filley was present: don't know if any one came home from Leoni and stayed at Fitch's that night: Fitch stated to me the object of putting breaks on.

Obstructions attempted by Filley's, in September, close by the tavern.

Corwin was one who attempted it: put iron in frog: got the mill iron at Fitch's: took it without leave.

Recollect distinctly that Filley came up to Prices: that was about the 20th of August, one half or three-fourths of a mile west of Leoni, we obstructed the Gazelle, and threw her off: it was pretty late when we returned to Prices, we slept in the barn; Filley returned with us from Prices where we went, about three miles: after that time have been with Filley to Leoni once, twice or three times: sometimes came on track, sometimes not: remember coming home on track after the Gazelle affair.

After that, Corwin, Filley, Williams, and myself stoned them, as told, when we were coming from Leoni; did not see Williams or Corwin throw stones; I know Filley threw, I did also; this was near Freelands, as the train was going east; I think I told Fitch of this stoning; he said it was right, give them hell; he used that expression, have heard him use it often; don't know I stated to him the object; but he often told me the object was to make people afraid to go over the road; we generally talked it over together; dont know who was present at the time; it was out in the street, opposite Filley's; has said the same in the tavern, at his own house and on the road.

Ball at Leoni, I was at it; I went, towards night, with a man who worked for Filley; Geo. Filley went with me; not positive, but think the ball was on the 8th of July; was at Coykendall's; don't recollect

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if Samuel Brick or Updyke was there, nor Darius Davis; don't know him, don't know Mr. Jackson, know Taylor, dont know if he was there; attended other balls there, was there on the 4th of Jnly, but didn't wait for the ball; some of the Champlins was at the ball of the 8th, Lyman C. was;it was almost 11 o'clock when we went out to stone the train, I think it was going east.

Have heard Gleeson speak more than once about railroad; Gleeson came to Centre about once a week,generally on Sunday; heard Gleeson say at Filley's they would stand by each other as witnesses; cant say if this was same time as speaking of letter; don't remember who he spoke to, but Filley and Fitch and others were present.

Gleeson arrived at Filley's along in the forenoon,about two weeks or so after Wəstcott came to the Centre; he said he had seen the letter; don't recollect if he said who wrote it; he said the letter satisfied him Westcott was a spy; don't know he said who it was directed to; W. said he saw it in prison at Jackson; he said he came to tell of it; I think the person who came in the buggy with him was present; don't remember who that person was; I went in the employ of Filley in October; the day I was leaving, Fitch told me to come into his house; I was in the road; this I think was the day I left; the cause of my dissatisfaction was, I didn't think Filley paid me as much as he ought for my labor, and he charged me six or eight dollars for liquor, and I didn't think I had so much; I drank every day while there.

Price one day gave me a key that unlocked the bar, and told me to keep it; I expressed my dissatisfaction to Fitch that day in the house; I did not claim pay for the obstructions from Filley.

I did not send word by Mr. Dexter to Filley to come out to Albion to Centre; I know a man named Dexter who worked with me at Filley's, and also at Albion; if I had so sent him I think I would have remembered it; do not recollect sending him word that I had baited for ducks and geese, but did tell F. so after he came; I had been baiting for them; I lived about four miles from Albion at the time Filley came; he came to me at Albion; I had not been in the employ of railroad before I went to Filley's; don't know I ever proposed to any of them to stone or obstruct; think I never did so without the assistance of some of them; I let off the water spout one night at the Centre; Cawell was with me: I have made an affidavit at Marshall as to what I have testified to last winter, Mr. Clark wrote it; I made more than one as to these matters, some three or four: they were made at Marshall; first was made about November, the last, the last of January; I have seen them since, since I came down here; have read them over once since I came here; have not seen them to read since I commencec being examined; read them yesterday morning; am now at work for railroad company; have not had frequent conversations with Clark about what I'd sworn to, nor particularly with counsel; believe Clark had the affidavits last; yesterday got them from Clark, when I read them.

As to what I know about the matters, I first talked with Charles White,agent of the railroad; after,with Clark Spaulding and others,told them what I knew, and as much as I have sworn to here.

One time Fllley and I met Williams and Corwin; cant describe

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the dress of Williams; it was a pretty dark night in September; was a suit at Leoni that day; think it was Barrett sued; am not very positive, but think it was one of the nights returning from the suit I met them; that time we came down on and met them on the wagon track; wagon road not far from railroad; met them about half way: W. and C. were on foot; it was about or a little after dark; they appeared to be going the sameway as we were; learned they were coming across from their own place; Filley and I were not going to, but were coming from Leoni; have not said otherwise to any of them; don't recollect the day of week; don't recollect that any one save Filley started from Leoni with me; we picked up our stones along by the railroad; think some were picked up before we got to the railroad; don't know who picked up the first one; we all picked up, I picked up some in the wood, we put stones in our pockets; I had a coat on; don't remember what kind of a coat.

Know two roads near Bakers; it was about half way from Leoni we met; it was nearer the Centre than the roads, the roads cross near Barkers; Some trees, not many along there; don't remember if we got over fences going to the Railroad.

Filley and I went to Leoni; think we were alone; do not think Fitch or Burnett either went or returned with us; did not pick up stones till after we met; I did not throw all I picked up, threw two or three; can't say but think Williams and Corwin were standing still when we met; can't say from what direction they came.

Heard Lyman Champlin say any Railroad say ought to be shot.

Sometimes there was light in the bar room, sometimes not.

Can't say how often Williams was in the Tavern, more than once; presume he has more than ten times.

When Champlin said Railroad spy should be shot, we were talking of Westcott.

Defence reserve the right of further examination as to statements as to Fitch hereafter.

To Frazer—I read my affidavits yesterday; but have a distinct recollection beside them; do not testify from them but from recollection.

To Juror—I never had horses or cattle killed upon the road; got the bar for obstruction at Fitch's; he lives opposite Filley; Corwin said I would get it there; did not myself know it was there; the several acts were proposed to me and no reward offered me to do them.

Court adjourned to 12th at 9 A. M.

NINTH DAY—MORNING SESSION.

TUESDAY, June 12.

Hiram Sherman, sworn—Lives at Marshall; have worked for Railroad company since last fall; know three Champlins, O. D. Williams, Barrett, Fitch, Burnett, Barbour, A. Filley, G. Filley, Wm. Corwin, Tyrrell, Dr. Moulton, A. Grant, Penfield, M. T. Laycock, the Prices, Dr. Farnham, Wm. S. Warner, (not present,) N. B. Lemm, Myers, Jack Freeland, Eri Beebe, J. N. Welch, R. Stone, B. F. Gleason, the defendants; have lived one mile south of Michigan Centre, in 1850;

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lived there about one year; have lived in Leoni mostly for 14 years; Michigan Centre is about four miles west of Leoni village, both in town of Leoni; lived on the farm of Delos J. Holden, farming; knew J. B. Cochran at Holden's; he worked there in August, 1850, he stayed there about a month and a half, more or less; while he was there I went to the railroad with him four times—went to watch the railroad in the night; first night, went into Fitch's park near the corner opposite Fitch's; Fitch and Filley live on four corners, north side of railroad; Filley lives on the N. E., and Fitch on W. corner, Park on S. W. corner, opposite Fitch's house; we did not discover anything that night; next night went to the S. E. corner in Gleason's yard where Corwin lived; were concealed there about two hours; saw three men on the track; don't know whether one or two came first; by and by another man came and joined them; the two first came out of Filley's house; don't know whether they first went in or not; think it was between 9 and 10; think the house most of the time was dark; they were about there some time, and I heard a whistle; pretty soon the third man came up from the north.

The whistle appeared to be a signal—one shrill whistle. One of the men had a gun and a bayonet; don't know whether it was one of the two first, or the last one who came up; they walked about there, heard them say something about tearing up the track and stoning the cars; don't know that I heard them speak of a wheat buyer; heard once in a while, a word about railroad spies, but could not understand the whole conversation.

The cars came along, and soon after, two of them went west and one north; I heard the report of what I supposed to be two pistol shots.—Was there two nights after, but saw nothing in particular. This was September, about the time of the State Fair at Ann Arbor. Soon after that about the 4th of October, at Jackson, I was employed by Darius Clark to watch the road. I went to the Centre the next day, and was there nearly every day for a week; was employed about a month. Saw a good many around the Centre. Generally saw Woliver, Corwin, Fitch, A. Filley, Wescott and Dixon. Woliver was not there long after I first went there. Corwin told me he had gone to near Albion. Saw Fitch and Woliver together a day or two before Woliver left; saw W. and Corwin talking privately; saw Fitch doing the same; think it was a day or two before W. went away, and saw them talking in this way several times; when he was talking with any one else, they would take him one side to talk with him; did not hear what was said by them.

Remember a fight in the ball alley some two or three weeks after Woliver left. During the two or three weeks saw numbers of meetings in the evening, at Filley's house, and at the ball alley. Saw Fitch, O. D. Williams, E. Champlin and his two boys, Corwin, Price's boys, Bush, Stone, A. Filley, Barrett, Hay, Penfield, and others there, whose names I cannot recollect.

Think I saw N. B. Lemm there once, also Beebe and Freeland.—During the two or three weeks saw them there at these meetings six or seven times; were not all there every time; saw as many as twenty there one meeting; I most always went home before the meetings

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broke up. One night after they had rolled a while, Fitch and others went into the house and went to playing cards; don't know that I ever saw Freeland there at evening meetings. At the largest meetings they rolled on the alley and played cards; stood in squads and talked privately together. Did not say much to me; they appeared rather to avoid me and Cochran at that time. Saw Fitch and Corwin go out and talk together. At one time I spoke of quitting Holden's, and Corwin said, "I suppose you think you can make more by laying out at night." Strangers came there whom they appeared to be acquainted with. Others also came, and Corwin asked me if I knew the m—. Champlin also asked me, and said they were some d——d railroad spies. I told him I did not know who they were.

At the meetings they appeared to be friends, sociable and free, generally called each other by familiar names, such as "Eb," "Jack," "Ammi," "Dick," &c., and Fitch they called "Captain."

The fight in the ball alley was in October; we were rolling on the alley; Beebe, Corwin and a Mr. Palmer came; we rolled till nearly sunset; Corwin and Palmer got into a dispute about the rolling and began to twit each other, and finally had a clinch. Palmer backed Corwin against the wall. I interfered and took Corwin's part; when I stepped out doors, saw Fitch, Wescott and Welch; heard some talk between Fitch and Wescott.

Corwin and I went out to an old car, and told him I knew he thought I was watching for the railroad; told him I was watching for the road, but that whatever he said to me, he need not fear me going to the road with it, that he knew me well enough for that; that I could watch on his side as well as for Mr. Clark and the road, and could tell him what the Company were doing; told him I watched for money, and did not care anything for the road more than to get their money; told him I would do anything I could for them (the people at the Centre). He said that was all he wanted; said he did not care how much money I got out of the Company; all he wanted was to tell them what the road was doing, and be on their side.

I told him I did not want him to mention what I had told him to Clark, as he would discharge me and refuse to pay for what I had done. He said he would tell no one but Capt. Fitch, and he would treat the next time he met me. Said he was satisfied now that I had come out and told them what I was doing, as they had suspected I was watching for the company.

Next day Corwin asked me into Filley's to drink, and then we went out by the road, and talked about an hour. He told me that Fitch told him that if he (Fitch) had known I was on their side the night before at the fight, he (Fitch) would have pushed Wescott into the room, and locked the door, and we might have hammered him to death.—Corwin asked me if he and I could not go that night and trim the switch, and said we could run the train off there, and in a night or two go and do it at Leoni, and in about a week go to Grass Lake and do it there; was speaking of the passenger train. I told him the switch was locked. He said they could do it with a crowbar, and told how it could be done. Had talk about Woliver; think he told me that he had received a letter from him, and meant to go out and see him. I

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told him I was afraid they were trying to get Woliver for a witness against them. He said he would go and see him and caution him—a little caution went a d——d ways sometimes.

Told me I must not reveal what he told me; and as for Woliver, he did not care for him—they could *swear him to hell*—there were better men than I thought, engaged with them. They could swear each other clear, and spoke of Lester's case, who was arrested for obstructing the track.

He said they could clear any man if he was caught; that there were respectable men engaged among them, and a great many more of them than I thought—they attended to Lester and said they got him clear. I told him to wait two or three days, until I moved to the Centre, before we went to throw off the train. Soon after that I was going from my father's, and saw Fitch, Corwin and two Credits standing and looking at Fitch's door; went to them, and saw Penfield and two or three others come up to Filley's house; heard P. ask if that was Sherman, and some one said it was. P. said he could tell by talking with me whether I was with them on the road or not; he came and talked with me a while, but he did not mention the road; I then went to my house—the next morning I wanted to go to Jackson. Saw Corwin at Shoemaker's warehouse, helping Dixon to load wheat; Dixon went over to the store, and C. said to me, what d——d fools we have been that we have not got a load of this wheat, he said if they loaded it, and the cars did not go out we could take it that night—said Dixon was the Railroad spy, and bought the wheat for the road; thought it would be no harm in taking it from the railroad company.

Next morning saw Corwin, Filley, Fitch and Welch at the Centre. I went there to get a team to move to the Centre; Corwin said he could get Welch's team for me. The passenger train, going West, had run off the night before: think it was the engine Rocket or Comet that had run off. Corwin and me walked along together; he said he had seen Capt. Spaulding that morning, and Spaulding said "well Bill, you have got us off;" said it was well done; Corwin said he would learn old Spaulding not to insult him; they had thrown them off last night, "and meant to give 'em hell right along for a month;" not certain whether he said "we" or "I" had done it—said he would let old Spaulding know there would be more done for the next month, than for a year past—it was a passenger train from the east.

A day or two after I rode up to Price's with Chomplin at his request; after we got out a little way Champlin said Corwin had told him that I was watching the railroad for them too, and that he need not be afraid of me, that whatever I told him I would do, that was the reason he asked me to ride, as he wanted to talk with me. On the road he told me about a spy being then watching, and said they chased him with Fitch's dogs across Wolf Creek, where he jumped in, and they lost track of him.

He told me as long as I kept on their side I would be safe, but if I turned against them they would shoot me, and if they could not do it at any other time, they would do it when I came on the stand to testify against them.

At Price's we all went into the shop, and Champlin told them I was

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watching the road, and was hired by the Company; and that Corwin told him he was acquainted with me, and I could be depended upon; that I was watching on both sides, and would let them know what the company were doing; that I was "*all right.*"

Price brought out a bottle, and we all drank. Eb. Price told me in presence of his brother and Champlin, that as long as I kept on their side I would be safe, and they would stand by me; but if I betrayed them, they would shoot me; would follow me to the end of the earth to do it: asked if I knew anything about Wescott being a spy; I told him I did not think he was; and Price said he would be d—d if they could fool him, for he had seen a letter that convinced him Wescott was a spy; said he saw the letter at the Centre.

Price told of a plan laid for Wescott; said Wescott had been in the habit of coming to the Centre and playing cards; the plan was to place a seat so that Wescott would sit at the window, and they would stone him through the window from the outside; those inside, at a signal, were to blow out the lights and jump away, when they were to smash Wescott's head with stones from the outside; this was told in presence of Champlin and the other Price; said they knew he was a spy, and he ought to be killed; this was the plan they had laid, and said if he had come again, they would have killed him; I spoke to Wescott and warned him; had also heard Corwin threaten to shoot Wescott if he had come down at night.

On the road home with Champlin, talked about getting Fitch's farm to work; he said I could get it, for Fitch thought a d—d sight more of me now since I had come out and told what I was doing; he now had confidence in me.

About the 7th of Nov., Corwin wanted me to go with him and make a switch: the way he told me they made it was to take an axe and break the bars and fix them so the cars would run off. I told him I would go that night; he said he would go and see Filley, and find where the iron bars were for the operations; I went over to Filley's and found Corwin there; I staid a while and went to the ball-alley; Fitch, Filley, Credits, Harry and E. Champlin were there, and the two Prices came there afterwards; some went back to Filley's:—Filley came out soon and told them to blow out the lights and close the alley: the key was gone, and he said some d—d railroad spy had stolen it; met Corwin and Champlin as I was going to the tavern, and they asked me if I knew the two strangers in the house: told them I did not: they said they were some d—d spies, some went to the tavern and some to Lull's store; saw Corwin again, and he said nothing would be done that night. A freight train came along slow, and Corwin proposed to cut off part of the cars and the next train would run into those that were left. We went up to the train and saw the conductor sitting on the top when we were going to cut off the train by taking out the coupling pin. Corwin said, "G—d d—n him, let us knock him off with a stone," and looked for one but could not find one; he said next time we would go down to the old tavern house, where there were plenty of bricks, and give 'em hell. Think it was the next morning I saw Corwin leading one of his horses to water from Filley's stable, and asked him if he was going to Jackson that

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day; had some talk about the road, and he said it had never injured him any, but what he done paid for all his horse keeping, as he had kept his horses there some months and had all the oats he wanted to feed them, and besides that it paid for all the liquor he drank, and that was considerable, and thought we had better go in and take a nipper. He spoke of his trading off one of Fitch's harnesses without his knowledge, and said he asked Fitch what he was going to charge him for it, and Fitch told him he would say nothing more about the harness if he (Corwin) would not; he also said he had got five dollars that morning.

I went to Jackson on a hand car that came along pretty soon, that morring. At Jackson I was standing on the side walk near Morrison's grocery in Jackson, and saw Corwin and "Dudd" Holcomb come up in a wagon; C. came to me and wanted to see me alone; he told me they had been laying a plan to get some flour, but did not know as I would fall in with it, but if I did not, I must keep still; he said they would do it that night and take at least three barrels of flour out of the cars; but before doing it they were going to set fire to a large wood pile up the track, to attract attention; said the way bills would be made out and the company would have to lose the missing flour, and not Mr. Shoemaker. During the afternoon it was again talked over; I rode home with them; in the evening Corwin went over and examined the cars, and came back and said it was "all right," the cars were loaded and the doors not locked. I got my supper and went to Lull's store; Corwin told me Eb. Price was going with him to fire the wood; Price was present; we were going over to Filley's from Lull's store; Price went to Filley's to get a place to stay all night after they got back; Filley came out and wanted to know if we were going a fishing. While we were there C. asked Filley for an old axe; Price said—"I have not the first d—d thing to fight with in case of trouble."

Filley gave him a large knife and said he hoped we would have good luck, and said if we wanted anything to drink after we got back, there was the bottle. Corwin, Eb. Price and myself started out and went about a mile west: Corwin proposed stopping to make a switch, but we had no tools. Price said, "One thing at a time: we will burn the wood to-night; we went to the wood pile, two went on one side and one on the other, and went around to see if any one was about. They thought we had better wait until passenger train passed, as they would stop and put the fire out. Price said he thought it would be behind time that night—that he and Williams had been on the track towards Leoni that night.

Price said that if any one comes we will run to the woods. Corwin said he would be d—d if he'd run, and Price must stick by him and fight it out. Price took out some matches and Corwin gave me an axe to fight with in case of discovery. They then set the fire; I was looking about expecting somebody, as I had before given notice to the road. I walked off, and saw several men crawling upon the ground. I went back to Corwin and Price and stood still; they soon came up and arrested us. Price afterwards, while we were in jail at Jackson, said at first he did not know but it was me or Corwin who caught him; but he used the knife to the best advantage when they arrested him,

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but found so many men around he threw it away and gave up. Here the Court took a recess for 15 minutes.

AFTERNOON SESSION.

In coming home from Jackson it was agreed to take the flour we were to steal that night to Corwin's barn, and Corwin said he was not afraid to let as big a man as Capt. Fitch know they were a going to steal it, and he would help them cut of it in case of difficulty.

While in jail at Jackson, they said if they made a State Prison offence of burning the wood, they must put off the trials, get bail and worry them out.

At the time the Goliath run off, Corwin said they had "done it up brown;" she was smashed, but he went home trembling the evening before, for fear it was not fixed right. Heard Filley say he should have to give the company credit for another dollar on account of the smash of the Goliath, as he had done so every time a large accident had happened.

Was at Filley's in Oct. or Sept. in ball alley, and asked him where his wheelbarrow was, as I wanted to borrow it; he answered rather short that he did not know, and turned away. I told Corwin I wanted it to wheel some wood home, that I did not mean to buy wood as long as the Road had it piled up there. C. told Filley what I wanted to do with the wheelbarrow and Filley asked me to take something, and told me where the wheelbarrow was.

Eb. Price said he had made a couple of bars to take up the track. Saw Wescott about the Centre when I first went there; he was familiar with Fitch and seemed to be intimate,walking with him, and some two weeks afterwards, I heard threats against him, and doubts expressed as to his being true.

Cross Ex.—I have made a statement in writing of this matter before I came here; have never been sworn in relation to it before; I wrote it down at the time, as the incidents progressed. I gave the written statement to Mr. Clark about the 1st of January last. I left there about Nov. and wrote some things after I left, which I omitted. I next had it in my possession, since I came here; I told Mr. Clark I wanted it to look over for the purpose ef refreshing my memory as to dates, &c.

Have looked it over twice, the last time last night—my wages were $25 per month while I was a watch, until I went to work out west on the Road; since then I have had $1 per day at the warehouse at Marshall. The writing I read over is the one I made, and not a copy; have made one or two additions to the writing since I first wrote it out. I wrote down the names of those I knew were operating against the Road at the time, what they said, and when. I noted the date I hired to Clark; cant tell the day of the month I went with Cochran, but it was the week of the State Fair; it was in the last of September; did not know the men I saw while watching in the park; one had on a black hat, and think he had the gun and bayonet: think we were about 40 feet from them part of the time; think the moon shone part of the time, and one night it rained some; don't know who whistled; they were three or four rods from the track when the whistle was

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made; should think the gun was a musket; heard only one whistle; could not hear all their conversation; they were talking of tearing up the track; two of them had been there about an hour when the cars came; the third one not as long; he was some 10 rods when I first saw him coming up. After they left heard the report of two pistols some distance off. My first talk with Corwin about the matter was after the fight at the ball alley. I commenced the conversarion and told him I was watching them; did not say I had been sent to watch Fitch in particular; did not tell Corwin my pay had been kept back because I had been unable to make discoveries, and solicit him to go in with me and commit depredations on the road; did not tell Gregory I was to have $1000 for each man I detected; my wages were only $25 per month.

Don't know that I ever had any conversation with Fitch about rail road on the night of the fight. The night Fitch went from alley to the house to play cards with others, don't know whether they played or not—that was what they talked of when they left the alley; never laid any plots to obstruct the road; never carried out any plots of any agent of the road to obstruct it.

I acted in concert with Wescott when he was there; after I commenced watching, spent most of my time at the Centre. Had known Eb. Price 6 or 7 years, was a blacksmith; sure I saw Williams at Filley's in Oct.: am positive I saw the Champlins there in Oct.

To Seward—Had no part in throwing the Goliath off; have told no one that I did, or that I and Corwin did it; no one present when Corwin told me what Fitch said about crowding Wescott into the room, and having him hammered to death. Corwin's habits were not the most temperate; he drank a good deal.

I had instructions from Clark to go in and pretend to join them, get their confidence, &c.; Clark told me to spend as little money with them, and have as little to do in committing acts, as possible; but if it was necessary to pay out any money in the matter it would be re-imbursed to me. I told Spaulding they were going to fire the wood; I was going with them; he told me to go. I laid in jail part one night and one day. I was bailed out by a man named Eaton. Henry Martin, Johnson, Burch and White, made the arrest. I was not personally acquainted with Mr. Eaton when he came to bail me. I am 32 years old.

Direct Ex.—My recollection of the facts stated are from my memory independent of reading the written statement I read to Clark.

Asa Wyman sworn—Knew Dr. Moulton, on trial; had a talk with him about railroads; he said he had heard they were going to blow up railroad; don't know whether he said *a* road or *the* road, or if he said either "a" or "the;" don't know what road he referred to; the conversation was at Rome.

Question—Where is Rome—is it in Lenawee, on the Southern R. R.? Ans.—No, *I hope not.*

We were speaking of the difficulties about killing cattle. He said they were going to blow up railroad, we were talking of all railroads; can't say we were speaking of railroads in Michigan. I said a cousin of mine, Martin, said the company would pay the value, and the farmers thought the cattle worth more than the company.

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Cross Examined.—Have never made an affidavit about this matter.

The witness said he wished to be discharged so he could go home. The counsel on both sides said let it be done by all means.

Joshua Wells was next called, but the hour of adjournment having nearly arrived, the court adjourned to 9 o'clock, June 13.

TENTH DAY—MORNING SESSION.

FRIDAY, June 13.

Joshua W. Wells sworn—Formerly lived at Mich. Centre; know Fitch, A. and G. Filley, the Prices, Barrett, E. and L. Champlin, Jack Freeland, Bill Corwin, Laycock, L. P. Penfield, Dr. Moulton, Tyrrell, Grant, Williams, Hay, Barrett, (by sight,) Holmes, Myers, Beebe, Welch, Stone, (by sight,) Seba Corwin, Dr. Farnham, John Cann, Gleason, Stone.

Those persons live on Railrod track; have known some of them 12 or 14 years; my age is 23; I am a farmer; have worked for Fitch, and some for A. Filley; worked for Fitch 22 months, from Dec. 1st, 1847; left him in Oct. '49; when I left Fitch's, went home, south of Mich. Centre, three-quarters of a mile, staid 4 weeks, and went to L. Penfield's and remained there till January, 1850, then went home and worked on farm; staid there until 11th Nov. last, when I came to this city, except some of the time that I worked for Filley, and some at Holme's; worked at Freight-house before it was burned, in this city. While at Fitch's, saw Williams, Filley, Fitch, Eb. Price and Corwin; he was not there so often during the 22 months; the others I saw often, did not know much of meetings during that time. Heard them talk of Central Railroad; the most was said the latter part of the time I was there; it was mostly by those I last named.

Can you tell what you heard said by them during that time?

There was something said about its being a monopoly; that a feeling was getting up against the railroad company, that would hold against them for a long time, because they hired help very cheap; did not pay wages enough; it had a tendency to render wages low; heard not much said about cattle being killed.

Heard Fitch make such remarks at several times; heard Fitch mention a letter he wrote to Brooks about the cars not stopping to take on Mr. Chatfield and family; he manifested some feeling; this is about all I heard while there; while at Penfield's was at the Centre occasionally in the evening; was tending saw-mill for P.; there was some feeling against the road about iron; at the mill one day I told P. they would have him up for having his sled shod with Railroad iron; he said he was not alarmed about that, for they never could prove any thing against them; they had tried several times and failed; said Fitch had a long head, and they never could do any thing whith them; he was always on hand for them, and, therefore, he was not afraid; this was in Jan., '50.

During fall of '50 was off and on at Filley's tending bar when he was absent; tended bar some when he was there; I was there two-thirds of the time evenings; saw most of the defendants there together, occasionally; sometimes only a part and sometimes most of them there; they met at Filley's; saw some of them at Fitch's; they gen-

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erally met evenings; have frequently seen as many as 20 there on occasion of balls; generally 5 or 6 would stay after the rest had left, and talk of road; saw Fitch, Filley, Bill Corwin, Jack Freeland, Eb. Price, E. and L. Champlin, Barrett the oftenest; when they were thus together, they talked much of railroad matters; they generally talked among themselves; can't remember any particular time, the meetings were so frequent; at some of the meetings, heard Fitch say he had written letters to his friends, telling them not to come over the Central road, because there were daily obstructions placed on the road which endangered their lives if they came that way; said he did it because they would not pay full price for cattle killed; spoke of handbills, and said he had friends at Buffalo and Chicago, and talked of going to advise people to go round the lakes.

The matter was talked over at Filley's tavern once, Williams, Gleason, Filley and others were present, they talked all about it; Fitch said they never could convict any one—because they could not get a jury that would bring them in guilty, as he had two many friends. Filley said at the same time they could get witnesses to prove they were some where, else—said they could prove it at Bean Creek, they had been there, and had witnesses to prove they had been there; heard this remarked several times; Fitch said they could get what witnesses they wanted down there. Heard Fitch boast of having many friends everywhere, and his great influence; heard others brag of their safety because Fitch had so many friends—heard Price and Filley say Fitch had many friends and would stick by them as long as he had any blood left in his body.

When on the track with Filley one Sunday heard Fitch describe how by placing a wedge on the track the cars could be run off—said it would bother and annoy the company; another time heard Fitch, Filley and Eb. Price talk of a plan to place a rail in the track to strike the lamp; a few days afterwards heard Fitch say such a thing had happened toward Leoni; this was after he suggested the plan; Fitch also spoke of breaking the chairs and prying the rails aside. Corwin, Eb. Price, A. Filley, Gleason, Williams and others were present, they all had more or less to say about it; the subject was introduced by Fitch; afterwards heard the plan had been adopted; think some of the defendants told me so next day, that it had been tried about half a mile east of the Centre; Fitch was present when they told it. The cars did not run off: they said if they had run off they would have run 30 feet into the mud.

Remember the law suit between Barrett and the company at Leoni; heard Fitch mention the time Spaulding run on to a log near the Centre. It appeared Spaulding had said something to offend Fitch, and he said he told Spaulding he had two double barrel guns at the house, and could get as many more as he wanted, and was prepared to meet the whole d——d Company.

Was at Jack Freeland's one Sunday, and he told me about a plan for placing powder under the road and placing a train to the track, so as to explode when the cars went over, and blow up the tack—this was a plan he suggested to get pay for some sheep they had killed. He at another time mentioned the same plan when we were on the hill

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with Brown, a colored man, sowing clover seed; once heard guns fired; and heard Fitch say they were fired by Elder Limbacker; he laughed about it afterward, and said one engineer had quit the road because the balls came so close to his head,he dare not run longer. One night I, Horace Coswell, and Laycock went round to Fitch's bed room window, and Fitch handed out a pair of horse pistols; never spoke to him about them before; we went through the shed. Fitch came in and gave Coswell a small rifle pistol, and said they were loaded—he told me to go down towards the dry marsh, and get as close to the track as possible, and shoot through the engineer's house when the cars came along, at any rate *give 'em hell*—think this was in the fall of the year. The pistol I had was loaded; the rifle pistol belonged to Dr. Moulton; heard Mynor Lacock say he got it of Moulton; heard Fitch speak of having spike bars made, don't know whether he did or not. One Sunday morning Williams and Wescott were at Filley's. Filley and Williams went out of North door and talked; Wescott at same time went out of the front door; I heard a part of the conversation; they spoke of the "Gazelle;" they all came in; Filley asked Wescott to change a $5 bill, and he paid Williams $3. Filley told Williams he understood that Fitch had paid him $10, and he now paid him the balance, and thought he ought to be satisfied.

Heard Fitch tell Wescott that it would not be healthy for any one to come out as witness against him in railroad matters, for he would shoot him down from the stand; they frequently all drank at Filley's, but never saw any bills paid; heard Bill Corwin say it was all paid for; Filley kept Bill Corwin's horses, and Bill Corwin said it never cost him any thing; heard Bill say he traded off Fitch's harness, and said Fitch would not dare say anything if he traded off his twin cattle;—don't know what he got for the harness; it was a good one; have seen some of defendants in private intercourse with Fitch—mostly with Williams, Freeland, Price, Corwin and Filley; Mrs. Fitch is Filley's sister; Fitch and Filley are brothers-in-law: saw Wescott about three; knew him to come down and see his wife occasionally, while he was tending bar at Jackson; Wescott's wife is my sister. After Wescott came to the Centre to live he and Fitch were intimate; afterwards they became jealous of him. Wescott was frequently at Fitch's house and have seen them in private conversation frequently; he was on good terms with Corwin and Filley until they became jealous of him; this was after Gleanson came from Jackson on Sunday, and said Wescott was a spy. Gleason said Mr. Goodwin (agent) had a letter from Mr. Brooks, saying Wescott was in the employment of the R. R. company. Mills Barber, I think, came with Gleason; they came in a horse and buggy, and stopped at Fitch's and Filley's; Gleason told the news to Fitch; heard them talking about it as they were walking towards Fitch's deer park; Fitch in the afternoon asked me if I thought W. was a spy? I told him I thought not, but if he was I would find out: Filley asked me if Wescott paid anything for riding on the cars;—thought something was not right.

Afterwards I noticed they were less intimate, and friendly towards Wescott; I heard a plan to dispose of Wescott, and saw the stones at the window with which they were to do it; there was also a piece of

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railroad iron about 3 feet long there; they had recently been placed there. I heard they were placed there for the purpose of assassinating Wescott; they were two or three feet from the house, on the south side, near the stoop and kitchen window; heard them say if they could catch a spy they would kill him; they knew I was Wescott's brother-in-law; heard this mostly from Fitch and Filley, O. D. Williams and Bill Corwin; I knew Jacob Woliver about the Centre; heard Filley say something about his turning State's evidence; Filley said he went out to Albion to see him; heard others say Woliver was straight and right and would not divulge anything; this was before Woliver went away; about the time he went I heard something about his being dissatisfied about a settlement with Filley, in which Filley charged him with some whiskey; heard Filley called it a barrel and then paid him a dollar as balance he owed him; heard Filley once ask Fitch what kind of a time he had last night; he replied first rate—that they chased one of them through deer park over the fence where the dogs could not get over; he was speaking of a spy. Filley said he got over the park fence and followed him and fell over a brush heap, and by that accident the spy got away and went through Wolf Creek, or they would have got him.

Have heard Filley and Fitch talk about Wescott taking Filley's tavern; they said in effect Wescott objected as long as Mrs. Filley remained there.

Fitch asked me if Wescott would take the house, and I said he did not want to do it as long as Mrs. Filley was there; he said Mrs. F. could go east. He said Wescott was the right sort of a fellow to have it, as he could make money. Heard Fitch say they believed Holmes and his wife were spies, and there was an excitement got up, and they talked of tarring and feathering them; the excitement was got up by myself, Fitch, Filley, Barrett, Laycock and Williams. Laycock proposed to tar and feather them at Fitch's dinner table; Fitch spoke and said the boys were going to have some fun with Mrs. Holmes. Filley said she sat on the fence one night and watched the track, and he knew she was a spy. Filley said he had watched around Holmes' house when the railroad hands were boarding there, to see if they were watching nights. Heard them say they were in a majority, and had friends everywhere. Have heard something said by them about their being the "Leoni Band."

Think I should know the pistols Fitch handed from his window.—(Here two fine trooping pistols were shown to the witness, and he recognized them as the ones handed out of the window by Fitch.) They were not fired, because we did not get to the cars in time.

Cross-examination—I commenced working for the co. 11th Nov. last; they asked me some questions and I answered them. Wescott first told about these operations. Wescott told me I should have a good situation if I would come out and be a man; I was introduced to Mr. Hurd, and he said I could go to work in freight house at 7 shillings per day; did not engage for any definite time.

Was there at the time of fire; never talked of this to any one before I came to Detroit; Wescott said there had been a good deal of difficulty, and that something would be up by and by; did not say what.

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After I came here, about the 1st of Dec., Wescott questioned me about the Road: Joy was present: I made an affidavit of what I knew: I have since seen it but not read it; Van Arman asked me some question about it last night; have made two affidavits in this matter. The first talk I heard about Road at Michgan Centre, was by Fitch, in '47 or first of '48; first conversation about firing pistols towards Leoni, was in July or August of '49; when we got the pistols Laycock asked me to go round to the window with him; I did not speak to Fitch: Laycock did not say what he wanted of them; I tried the one I had and found it loaded; Fitch told Horace Caswell they were loaded: the intention was to shoot them into the cars: all I knew was what they told me: I was going to shoot because Fitch told us to do so when we got down to the marsh. Fitch told us to get close up to the cars, and shoot through the engineer's house at the engineer, at any rate *give 'em hell*: there was something said about my shooting on the way down: don't think I was dissuaded from shooting by the others: my intention was to shoot according to directions, if I had shot I should not have killed any one: but did not say to any one I would not shoot to kill: the reason I did not shoot, was because we did not get on the spot in time to shoot.

After the cars passed, it was said, if we meet any spies now, we are prepared for them: don't remember it being said among us that there was nothing but powder in the pistols: did not hear Laycock or Caswell say there was no ball in them: we carried them back to Fitch's house that night: when we went round to the window after them, nothing was said: Fitch was there and handed them out: I think Laycock took them when we returned to the house: when Fitch said, 'shoot at the engineer's house:' think I said 'well:' we got back about 10 o'cl'k: think we did not go to any other place that night: don't remember where Fitch was when we came back: I worked there at that time. I once laid a bar of iron across the track to see the fire fly: several men were standing by, watching. Fitch spoke of the fire: it was not expected it would throw the cars off, only to make the fire fly in the evening: I put no other obstruction on the track. I did not in June 1849, pile ties or iron on the track west of Fitch's near the white bridge, to the best of my recollection.

Here the court took a recess of 30 minutes for lunch.

AFTERNOON SESSION.

J. W. Wells cross-ex. continued.—Dont remember of placing obstructions on track, when 2 or 3 men came up from towards Jackson, and I run from them.

Did you at any other time procure a pistol for the purpose of shooting at the cars? Question objected to as only relating to collateral facts.

Frink claimed the right to show that witness had been guilty of aggressions the same as he had sworn others had committed.

FRASER—said they had no right to go beyond matters drawn out in the examination in chief.

SEWARD—It remains to be seen whether the testimony thus far taken this week is not all collateral unless they be brought to bear upon the charge in the indictment; the burning of the depot in Detroit—if

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there was a grand plot, this witness confesses himself as one of the actors, we have a right to know all he did in connection with the plot.

FRASER—They have no right to show, on cross-examination, that the witness and not the defendants committed the offence. If they wish to establish that another set of men did the acts, or that another conspiracy exists, they can make the witness their own; but on a cross-examination they should be confined to the examination of the matter in chief.

Court sustained the objection. The defendants have a right to give the testimony as evidence, but it is not legitimate cross-examination, according to any rule known to the court.

Witness—I passed the time of day with A. H. Delamater when he came in the other day. I talked with him on the cars; I did not say to him I was sorry I had ever said anything about these railroad matters. I told him I was sorry I ever knew any thing about it. I did not tell him I did not know any thing about these defendants or any of them; I did not tell him in that conversation that I knew nothing against Mr. Fitch.

When I tended bar for Filley I never took pay for liquor of these men, or charged it; have seen them round at Filley's on Sundays and at different times; don't know all the exact days, think most of them were there at different times during the month of August; saw half a dozen of those men there most every day.

Filley at one time had about a dozen men at work for him; at the meetings have known half a dozen men to go into the kitchen and stay an hour or two. Fitch, Prices, Corwin, Barry, Filley and Williams went in often; sometimes they played euchre in the kitchen; no one told me to call these assemblages *meetings*. Heard Bill Corwin and others say, "boys we must all meet" at such a time, and all be on hand; don't know what else to call them but meetings; they were talked of as meetings; in July, September and October, was most of the time at the Centre, at Filley's, off and on; Gleason usually came on Sundays, but sometimes in the evening.

Heard Fitch say it was rather hard to throw the cars off in the dry marsh, but never heard him generally discountenance placing obstructions upon the track. Heard Fitch speak of going to Chicago or Buffalo to turn travel off the road; said it in presence of Wescott, Williams, Corwin and one or two others. If any stranger came up when they were talking about these matters, they always changed the conversation while they were present. Have known this several times; Holmes' boy, Hart, and Filley's boys were sometimes about the bar room. The meetings were sometimes in the bar room and sometimes out doors—think Wescott told me of the stones under the window were common cobble stones, about a dozen of them; heard Corwin speak of going to see Woliver; did not say he had sent for him. I went home from Detroit 6th of December, and was sick at my father's house; Eb. Price came to see me; I did not say to him in presence of father, brother, and sister, H. & A. Holmes, that I never heard Wescott say any thing about such a plot to kill him, or that I never heard of such a plot; I told Price there had been a plot laid to take Wescott's life, and that I knew something about it, and left Mich. Centre mostly on that account.

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I heard Fitch say to Wescott, at Filley's, that he would shoot a spy if he could find him out: think he said at the same time something about spies making false statements against him for the purpose of implicating him with obstructions, &c.; spoke of their swearing false in the Lester case. Bill Corwin and others said they would "shoot a spy as quick as they would a dog." Heard Fitch say they had a majority with them.

Seward here interrupted the examination, and said as the Court had intimated a desire to hear authorities as to the admissability of testimony for defence on cross-examination, not brought out by examination in chief, (as proposed and overruled a few minutes since,) he had turned to a case or two in the books before him, and would read them at this time, and then leave it for the present; he cited Cowen & Hill's notes on Phillips, p. 396, 419; 2nd Russell on crimes, pp. 926 and 938; Roscoe, p. 129.

Van Dyke said he did not understand the question to be whether a witness was obliged to implicate or degrade himself—it was whether evidence might be offered of a collateral nature, of his distinct acts separate from the charges in the indictment; whether, on cross-examination, parties could enter upon a distinct matter of reference not touched on in the examination in chief.

After some conversation among the counsel as to the scope of the question asked and overruled, the question was repeated, "Did you not on any other occasion get a pistol to shoot at the cars?"

Van Dyke objected, and proceeded to argue the objection, and cited Russell on crime, 935; 1st Starkie 141; Cowen & Hill 726; Roscoe, 169; 14th Peters, 17th May. Now, as to evidence to impeach or contradict a witness, he cited 1st Cowen and Hill, notes 745.

Mr. Seward said he insisted on putting the question, 1st, as proper cross-examination; 2d, as proper, if answered in the affirmative, to impair the credit of witness.

The hour of adjournment having arrived, the Court deferred its decision and adjourned to the 14th at 9 A. M.

ELEVENTH DAY—MORNING SESSION.

SATURDAY, June 14th.

Frink said one of the prisoners, Wm. Gleason, being indisposed, wished to return to the Jail, and consented to have the trial go in his absence. The court said the matter could be arranged by stipulation, which was accordingly done.

COURT—In looking over the books on the point discussed lass evening, touching the course of cross-examination, the court find the opinions it entertained at the time are not admissable; but may be sustained touching collateral testimony, if the questions asked be for the purpose of impairing the credibility of the witness: citing Greenleaf, p. 435, and some other cases to show the rules.

J. W. Wells' examination continued by Frink—Did you not, on any other occasion, get a pistol to fire into the cars?

Answer—I did not.

Question—Did you not go into Fitch's garden with a pistol or gun to shoot at the cars either soon before or soon after you and Laycock got the pistols to go to the marsh to shoot at them?

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Answer—I did not, at any time, never in my life, on any other occasion get a gun or pistol to shoot at the cars.

Question—Did you not state to Mr. Delamater that you did not know anything against Mr. Fitch, and that you had wished yourself dead a thousand times before you were got into this scrape?

Answer—I never told him any such words; I did not tell him I never heard Fitch say anything except what he said openly and above board; never told him any such words. I stated that in substance or something similar—what I did say was, Delamater asked me if I knew anything about Fitch, I told him yes, everybody knew something about him who had been there, that Fitch had told me since he had been in jail that if the company could make out anything he had said he was willing they should do so; Delamater asked me if I was "right," I told him I was; it was out towards Dearborn, last week or week before, on the cars; I told him he had said considerable, and I should have to swear to it, and there would not be any more come out than any body had seen. Delamater commenced the conversation.

In my conversation with Penfield at his mill, about the iron on his sled, he did not tell me he got the iron long before the company bought the road from the State; don't remember anything being said about the State owning the road; think there was no one else present.

There were two men, Dexter and son, working for Filley, building ball alley in 1850, they boarded with Filley; don't remember whether Williams worked for Filley in harvesting, or whether Corwin worked for Fitch; I did not work for him then.

By Wells—I know J. V. Carmer, he was on the cars in May; I do not know whether it was the 10th; had a talk with him about Mrs. Eldred's child; I did not then tell Mr. Carmer, if I had not come out and sworn against these men, I should have been where they are now. I told him if I had stayed with them, I should have been where they are.

Direct by Van Arman—Delamater commenced the talk referred to, he asked me if I was "straight;" I told him I was; he asked me if I knew anything about Fitch, told him everybody who had been there had heard him say more or less, and that what I knew about the matter, I had got to state; no one else present. We met at Wayne on the cars.

At the time we got the pistols of Fitch, he told me and Caswell they were loaded; this was under the shed; we got the two pistols from Fitch from the window.

Filley told me to let the men who frequented there, Price, Barrett, &c., &c., have liquor and not charge them, as he and they had deal together; when Fitch said it would be hard to throw the cars off in the dry marsh, he said they had better throw them off somewhere else.

By a juror—Was living at Fitch's when he handed the pistols out of the window; there was no concert between Laycock, Caswell and me, before we went for the pistols, Laycock was working at Fitch's also; and Caswell was stopping there, Laycock asked me to go round with him for the pistols, I did not know what they were for until we got round in the shed where we met Caswell, and Fitch handed him the rifle pistol; (the witness in fore part of examination swore that Fitch

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had given them directions to go to the dry marsh to shoot at the engineer and give "'em hell" generally.—REP.)

Harmon L. Spaulding, sworn—have lived in Jackson 8 years and been engaged on Central Rail-oad; know Fitch, Filley, Champlin and son, Lemn and all the others with the exception of Welcome Hill, John Ackerson and Erastus Smith, never had much acquaintance with Mount: in the last 18 months had been frequently at Leoni, have seen a good many of defendants at the Centre; seen Price boys, Champlin and son, Corwins, Williams, and Lemn occasionally. Barrett, Fitch, Filley, have seen them all there at different times assembled together; remember one Sabbath evening, saw Fitch, Filley, Barrett, and think the Price boys; I was there to get fences built for the company. I have often passed there and generally saw quite a number of them assembled there, they knew I was employed on the road; they generally passed the time of day with me, but they never talked very free with me, they appeared to rather avoid and watch my movements.

Remember the suit of Barrett against the Co. at Leoni; before Bildad Bennett, Mr. Lemn was counsel for Barrett, the subject matter of the suit was killing a cow; Fitch was there, there were two or three meetings; I was there twice, and saw Fitch both times; Williams Champlin and others there, I saw Woliver there once; Fitch was consulting with Lemn several times during the trial; Wm. D. Wescott was there; saw him and Fitch talking together; Wescott was sick that day; Fitch came after the suit was adj. and asked me if I knew Wescott, I told him I knew him by sight; Fitch said Wescott came down with him and was unwell, and wanted to go home, and that he (F.) wanted to stay until evening, and asked me to take Wescott into my buggy and carry him to Mich. Centre; I was acquainted with Wescott and knew his business there as a spy; Wescott's demeanor toward me was very distant; we hardly passed three words together until we got out of their hearing.

Think Fitch wanted to stay at Leoni on account of some puppet show or caucus to take place there; I think it was in August. I remember the time when the Locomotive "Dexter" was run off east of Mich, Centre, on the dry marsh some eighty rods east of the Centre, it was in June 1849; myself, Otis Kingsbury and J. M. Hewitt were on the Locomotive, it was drawing a train of racks loaded with R. R. timber going west. in the P. M., we were running on the passenger trains time. After we got to Leoni we run very slow for a while, and then increased the speed to get out of the way of the passenger train which was expected; I discovered a stick of timber ahead but could not stop the train; we struck the obstruction and it was cut in two, and did not throw off the train; I stopped the train after running some 40 rods, the other two men jumped off before we struck the timber.

As I approached in sight of the old tavern stand, at Michigan Centre, I saw several men moving towards the engine, then standing still. Earl first came up, next came Fitch, Filley, a man named Rogers, and a man I supposed to be Dr. Moulton. All the rest of them I did not know; I think some other of the defendants were there. The most

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that I said was with Fitch, who came up and said "Spaulding what's the trouble?" I think I told him some d—d hyena had put a timber on the track but we had not run over it. Fitch said "Spaulding, by God, the company never can run this road in safety until they come out and pay us our price for killing cattle and damages done to other property." I said I could not see why the obstruction was placed on at that time, unless it was intended to catch a passenger train, as they did not know this train was coming; there were some remarks made like this, "probably the men who put it there knew their business." I said if it had got to that pass that we could not do our business on the road, I, for one, was ready to come out and defend the road with arms if necessary. Fitch said if that was it, they might come on, he had at his house two double barreled guns and some pistols loaded, ready for business, and they had men enough to use them; I did not hear all that was said by the crowd. Hewett and Kingsbury had come up and were on the ground considerably hurt by jumping off, I was on the engine, there was some conversation between them which I did not hear; they, Fitch and those with him, from their manner, were rather anxious to get up a fight with us; I think the Mr. Rogers referred to, now lives at Niles.

The same time I found other obstructions on the track near Filley's house; they were old strap rails driven into the joints of the rails. They were placed in along for 60 rods, some right opposite Filley's house and Fitch's garden. There was generally a bush thrown before the obstruction to cover or hide it from us; once found a dead calf drawn on the track—the obstructions were well calculated to throw a train off—some of them were within 30 feet of Fitch's house—the track within 20 or 30 feet of Fitch and Filley's houses, any one coming out from Fitch's, towards where the men were when they came to the engine, must have passed right over and among these obstructions on the track—it was about 5 in the afternoon. The dry marsh spoken of, is about 60 rods across; have repaired the road there—the marsh is very soft. I think an engine to run off there would go out of sight under ground—the obstruction was placed on the most dangerous place, and calculated to throw the engine off, and it was a miracle how it escaped running off—the men who came up were standing in sight, apparently watching. The dry marsh has the appearance of being a Lake crusted—it shakes considerable when a train goes over and has had to be filled in some 8 feet since it was built, to keep it up to the grade.

Cross examination by Smith—I think I have a distinct remembrance of what was said between Fitch and me, and have stated it here. I did not say in reply to Fitch, that "some of you d—d hyenas have put a rail on the track, and d—n you, you ought to be shot, and that I would turn out at any time to help shoot you." I once had a talk with Fitch at Jackson, but could not say such was the language used on that occasion—never made any threats to kill Fitch, or that I would kill him as quick as I would a massasauger.

Witness was shown a plot exhibiting the location of Fitch's house with the railroad, and made some reference to it in answer to questions by defence.

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Direct examination by Van Arman—Where the men stood when we run on to the obstruction, it was the best point for them to see the location—they could not have seen it as well as Fitch's or Filley's house.

It being a ¼ to 12—

Seward said he would suggest that the session continue until 2 or 3 P. M., as he had been informed that about that time on Saturdays, the butchers usually made so much 'noise and confusion' in the lower part of the building that it was difficult to hear any thing in this room after that time.

The court intimated, that, as the "noise and confusion" might make it difficult for the gentleman to make himself understood, he would consent to any course that would accommodate the jury and parties, and if necessary, resort to the "higher law."

The court took a recess of 10 minutes.

AFTERNOON SESSION.

James M. Hewitt sworn—By Van Arman—I have lived in Marshall, for the last 4 years, have been fireman on the railroad on various locomotives; am acquainted with Mr. Warner on trial; have seen several others of Detroit; I was on the road in summers of 1849 and 1850; passed through Leoni about every day; generally passed there in daytime, have seen a dozen or so people assembled at Michigan Centre, frequently, both in day time and edge of the evening—have seen Fitch and Filley with others there, standing by the track; have met with obstruction on the track once, between Jackson and Grass Lake—that was in August, 1849—am positive of the time; it was on a curve, ½ mile east of Michigan Centre, on the marsh.

Think it was between 5 and 6 P. M., with a rack train loaded with a road timber. Otis Kingsbury was on the train, and Spaulding as conductor; had the engine "Dexter" going west; first obstruction was a railroad rail about 12 feet long, 6 by 8; I saw it 6 or 8 rods before we got to it, could not stop the train; I and Kingsbury jumped from the train; Spaulding remained on it. I went on and overtook the engine after it stopped near the crossing at Michigan Centre. I noticed the rail that was across the track was broke; think there was about a dozen about the engine when I got up to it; Kingsbury went up with me. I first saw the crowd collecting about the engine. Mr. Fitch and Filley were in the crowd; don't know any of the others; heard Fitch ask what the matter was, Spaulding said "some of you hyenas have put a rail across the track and tried to run us off." Some one of the crowd said they wished they had run us off; Spaulding said I don't see what you have against me or the other men that you should try to kill us; he had not been running on the road for some time: A. Filley replied they did not care who they killed; would as lief kill him as any one. Spaulding asked Fitch what his object was, and he replied there had been cattle killed there that had not been paid for. He said to Spaulding "*by God* you cannot run with safety over this road until the company come to our terms and pay us for the cattle that have been killed." They threatened to flog us if we did not leave; the remark was made that they would like to shoot some of us hyenas,

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meaning us engineers; Fitch said he had guns in the house; did not hear all the conversation between F. and Spaulding. Fitch did not pretend to deny that they had placed the obstruction on the track.—Spaulding said the trap must have been set for the passenger train, and some one said they were aware of that; their manner towards us was hostile.

Their threatening language was to us and towards the company. We found other obstructions along the track; a bar of strap rail was put between the joints of the T. rail; this was about half a mile further west; there were three more still further along west; think there were four in all; the last one was concealed by some bushes; the next was a calf skin across the track—think it was a calf skin; this was 30 or 40 rods west of Fitch's. The engine stopped a few rods west of the crossing between Fitch's and Filley's houses. If the stick of timber on the track had been a new one, it would have doubtless have run the engine off, but it was an old one that had been taken up. We were running down grade; I think if the engine had run off then, it would have been difficult to find it again; think it would have gone down below. We were going round a curve, where an obstruction would be more likely to throw the engine off.

Cross-ex. by Frink.—Did not see many meetings at Michigan Centre in '48; saw more in '49. Frequently stopped there an hour or two on side track to wait and meet another train.

By Seward.—We made no threats to the crowd, and heard Spaulding and Kingsley make none. Heard Fitch say he had guns. Mr. S. seemed to be somewhat riled—all hands were excited—did not hear Spaulding use profane language, and call them "d——d hyenas," he might have said so, did not hear all that was said. Have met obstructions west and east of Niles. When I jumped I struck an embankment. Have been on trains run off by cattle, twice.

Direct by Van Arman—the obstructions at Niles were about September. A rail chain was placed on the track; think it was between 7 and 8 in the morning; can't say positively who the engineer was; it was the passenger train. Often found chunks of wood on the track; last fall found one east of Ypsilanti. Have frequently found obstructions on the road at different points.

Otis Kingsbury, sworn; by Van Arman—Reside at Detroit since 1841; an engineer on the road; have been for three years. Was on the road in '49. Run the locomotive "Dexter" all summer. Heard part of Hewitt's testimony; last on the stand. He was with me once, July 7, '49, when the track was obstructed. Spaulding was on the train: saw a log on the track ahead, reversed my engine and jumped off; was considerably hurt: engine run 50 or 60 rods to the side track at Mich. Centre, the log on the track was on a curve down grade, where it was very difficult to stop a train—was running on passenger train time: it was the same time referred to by Hewitt; went on to the engine, and found a crowd getting about, from four to seven; might have been more; saw Fitch there, the others I did not know: heard some of the conversation there: did not pay much attention to what was said, as I had been very sick, and was hardly able to be on the cars then. Heard Fitch say the road could not be run with safety until it

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came to terms and paid up for the cattle killed: I did not know Fitch at the time, but after I left I inquired of Spaulding who that was that made that remark, and he said it was Fitch—the same one here in court: they said nothing to me, but talked with Hewitt and Spaulding in a hostile manner.

Found other obstructions on the road further west, pieces of strap rail between the joints of T rail, also found a dead calf, or part of one, on the track.

Cross-examination waived.

Van Arman said they had no other witness present, and asked if the court designed to adjourn, at this hour—2 o'clock.

He was informed that the market under the room now held as a court room, would to-day, open at about 2½ o'clock, and the noise would interfere with the progress of the trial during this P. M.

The court said they might continue an hour longer, or until the "noise and confusion" below commenced. A witness was sent for.

Spaulding recalled; by the People—Was on the train of cars that brought the prisoners to this city, the day of the arrests at Michigan Centre, Leoni, &c. Saw Fitch on the train. He asked me who Henry Phelps was; said he did not know any such man; asked me if we had a man by that name in our employ, (meaning in the employ of the company,) and stated that he learned by the warrant, that the complaint was made by Phelps, and said he did not know him, and could not locate him anywhere. He affected to be somewhat surprised that the complaint should be made by some one he never knew, and pretended to tax his memory to remember who he was.

Cross examined by Frink—He did not express surprise that he should be arrested upon the oath of such a vagabond as Phelps—but said he did not know any such man.

Fitch did not, to my recollection, say that he thought it strange he should be arrested on the oath of Phelps, charging him with a conspiracy with Washington Gay, a person who he never knew or saw.

Mr. Van Arman said they would hereafter prove that Fitch was intimately acquainted with Phelps.

Frink replied that they need go to no trouble to bring witnesses for that purpose, for they would admit that he did know him.

The Court said as there were no other witnesses in attendance, he would intimate to all concerned that next week must be a working one, and they must have their witnesses on hand at the hour. The Court would not wait for counsel or witnesses.

The Court then adjourned to the County Court room at 9 o'clock, on Monday morning.

TWELFTH DAY—MORNING SESSION.

MONDAY, June 16th.

Harvey M. Dixon, sworn—Reside at Marshall; am under-sheriff—wagon maker by profession; know Lemm, Filley, Fitch, Barrett, three Champlins, Jack Freeland, Dr. Farnham, have seen Dr. Moulton, the Prices, defendants on trial; became acquainted with them while stopping at Michigan Centre, in the fall of 1850. Stopped there about two months; went there on the 20th of August and left 12th of Oc-

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tober. While there, boarded with I. D. Toll; frequently saw defendants at Filley's in the evenings; some were there more than other's, the Price boys, Corwin and O. D. Williams and two of the Champlin's were there the most; did not see Lyman C. there as often as the other two. They met there from two to four times a week; have seen them in private conversation, but when I approached them they would break or change their conversation. Fitch was almost always with them; saw a man they called Gleason; Fitch introduced him; when Gleason came there, Wescott, myself, A. Filley, and captain Fitch were at Fitch's house in the evening, playing a game of euchre; Barber came with Gleason; as they came in captain Fitch and me were playing partners. Fitch introduced G. and they two passed out into the parlor; Fitch afterwards came out and called Filley into the room, and think Barber went in with them; when Fitch came out and spoke to Filley, Wescott said there was "something up." When Fitch came out his manner was changed—he appeared cold and indifferent; he appeared less sociable with me from that time forward.

This was in the fore part of September; prior to that time, Fitch had been quite sociable, and always treated me gentlemanly, but not with the same familiarity after this occurrence in the evening. This was about a week before I heard Gleason came down on the Sabbath.

I remember hearing Fitch speak of the law-suit at Leoni; said he was going down; Wescott went with him; Wescott came back in the evening, sick; think Lemn came back with Fitch; the cars were obstructed the evening previous; heard Fitch say he went up to where the cars stopped; think he said he and Lemn went up, but am not positive; he said Lemn had said he took a large jack-knife with him, and slipped it up into his coat sleeve, as he did not know but he might have occasion to use it; the obstruction was old ties.

Previous to Gleason's coming down, Fitch and Wescott were quite intimate together, frequently talking privately; Wescott was frequently at Fitch's house. Woliver was there the most of the time I was. After Gleason came on Sunday, Fitch's manner was changed toward Wescott.

At one time Woliver, Fitch, Filley, myself and some others, were standing in front of Filley's, Fitch stepped out and came back and said he thought he saw a fire in his park—I did not see any. I know Grant, one of the defendants. One night as I was going home, A. Grant was with me, and I remarked they ought to take this wood-pile away; he replied, if it was not for the buildings about here, it would have gone with the lumber long ago; did not say what lumber. Never heard defendant make threats against the road. Grant's house, Toll's store, and Filley's barn stood near the wood pile we were talking of.

Heard Fitch say Wescott was making arrangements to rent Filley's tavern and ball-alley: said he thought Wescott would keep it up better than Filley did, and that he was promoting the arrangement. After Gleason came down did not hear him mention the subject. The wood pile belonged to the Railroad company.

Cross-examined by Frink—Was employed to go to the Centre by Darius Clark; assumed the character of a wheat buyer; went there to detect the depredators on the road; had no special instructions how to

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proceed to get into their confidence; have never settled with Clark, and don't know much I shall get—no price was fixed upon; told him he would have to pay me well for going: the amount of pay was not to depend upon my success; he gave me money to buy wheat: I paid my expenses out of it: generally saw those mentioned at Filley's and the ball alley. A Mr. Dexter and his son were there, but left before I did.

Direct examination by Van Arman—The morning I left, Jack Freeland said to me, there's that d——d wheat buyer—you did not buy my wheat, did you? God d—n you I didn't mean you should. I thought you was feeding soft soap, and I eat a good deal of that before I came to this country. I didn't speak to you did I? I didn't mean to for I didn't like your looks.

To a Juror—Filley's tavern was a pretty hard place; they used to drink a good deal; think I saw Bill Corwin pretty near drunk at one time: they generally drank by platoons. They generally talked in squads, privately.

Cross examined—I have frequently treated them myself, and paid for it; I charged that to myself.

Geo. H. Holden, sworn: by Van Arman—I reside at Jackson: been there 9 years, am a constable, and know a part of defendants on trial; knew Fitch for 8 or 9 years; remember seeing him in Jackson in August, 1850, at George Gardner's grocery; Gardner and John Gillespie were there; heard Fitch and Gardner talk of road; Gardner asked F. what they meant up there—meaning Michigan Centre—what they meant by stoning the cars? He replied that it was a mild means they were using, but they would get something worse than stones if they didn't pay for cattle killed; said every animal they killed would cost them $100 a-piece; he mentioned the R. R. spies who were about there, and that they must keep off his land, if not, he had two good dogs and guns, and would "fix 'em out," if they didn't keep away. I think it was last Oct., the cars (locomotive Rocket) run off the switch at Mich. Centre; I was at Filley's tavern at the time until after the cars run off; I got there in the P. M. and staid till the cars came along. Saw Corwin there; he came into tavern 15 or 20 minutes before the cars came along; he said he had been up to Champlin's to a husking bee. Grant soon came in and said the cars were off. I remember Messrs. Cochran and Sherman worked for my brother that summer; he lived near the Centre.

Cross Ex. by Frink—I was frequently at the Centre in employ of the road, to find out the offenders on the road; I got $2 per night, was not employed by the company the night the Rocket run off; generally staid in the corners of fence; think I heard the commencement of the talk with Gardner and Fitch, might not have heard the whole of it.

John Gillespie sworn—Live at Jackson, a mason by trade—been there since 1838; know nearly all the defendants on trial; know Fitch and Wm. Corwin; frequently seen Fitch at Jackson; heard him speak of Railroad once at Gardner's grocery, or on the walk in front of it. Holden, Gardner and others, were present; it was on the 16th day of August, 1850. Gardner spoke of cars being stoned the night before;

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Fitch replied that it was very mild means they were now using; if they did not pay for cattle killed they would get something worse than stones: said it would cost the road $100 for every animal killed; said spies must keep off his premises if they expected to get off with a whole hide, for he had good dogs, guns and buck shot: said he would advise his friends going east not to get on the cars until they got thro' Leoni—they had better get on at Grass Lake.

At Morrison's grocery in Jackson, I once heard Corwin say they must not ride on the road—they had been notified east and west not to ride on it if they wished to escape danger. This was said in reply to a remark that they ought not to endanger the lives of innocent people. He did not pretend to deny being engaged in the matter of obstructions.

Cross Ex. by Frink—Was employed in fall of 1850 by the company to watch the road at Mich. Centre; think I was there 12 or 15 nights; usually went near the Centre. Holden was usually along. I got $2 per night; generally staid near the fences near the road. Saw Fitch at Gardner's in middle of the day; I listened attentively to hear what Fitch said; I noted down the date that day; I afterwards made an affidavit of the facts, but not about what I heard Corwin say.

Might have stated the facts about Corwin to Spaulding before the arrest, but never reduced them to writing. The conversation at Morrison's grocery with Corwin was general, but rather directed to him. Fitch did not state by what means it would cost the company $100 for each critter killed.

Caleb Loud sworn—by Van Arman—Lived at Jackson 5 years, dealer in horse medicine, (Loud's celebrated Ointment,) know Wm. Corwin, Fitch and some others of defendants. In March, 1851, saw Corwin at my brother's shoe shop in Jackson. I swapped horses with him:—we were riding round the sheds by the Depot at Jackson, when I remarked that a fire there would sweep the whole lower town. He put his hand on my arm and said, "Just remember my word, there will be one here before long."

Seward objected to the testimony, and moved that the last answer be stricken out, on the ground that the transaction related to a time some weeks after the burning of the Depot, the offence with which the defendants were charged.

Van Arman said they would not insist upon it at present if they objected—would not raise the question before the court at this time—it would come up hereafter. He wished the testimony might stand for the present, subject to be stricken out after the question involved was agreed and decided,

Mr. Seward preferred that the question should be now decided, but would assent that it be now stricken out to be restored hereafter, if after full argument the court deems it admissable.

This course was assented to and taken.

Witness—Corwin at one time said they never would bring him to trial for burning the wood, if they did they could not convict him, as they had witnesses enough to swear him clear, and wished me to use my influence for him by talking among the jury, and said it would have great influence on public opinion; wanted me to go among the farmers south of Jackson, and operate in this way.

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Cross Ex. by Frink—He, Corwin, introduced the conversation; he did not tell me that Sherman burnt the wood, or who did it. I am not in the employ of the Railroad.

Amos B. Taylor, sworn; by Van Arman—I live in Albion; been there four weeks; formerly lived at Marshall since 2d of August last, and formerly lived at Jackson, and in the fall of 1850 lived at Michigan Centre. Went there from Jackson, I think in June; was there 3 or 4 weeks and went back to Jackson; while at the Centre was engaged cutting bushes for the company; have been repairing on the road for a year past. I know A. Filley and have seen O. D. Williams; not acquainted with him; know L. Champlin, also Woliver. Saw Woliver and Williams together at the Centre; was boarding at Holmes'; heard the stoning of the cars and got up. Wm. and Jos. Monroe, and Mr. Cable were abed with me; the cars were going west; we got up and went out in the yard; heard men coming down the street; heard Williams as his name was called; heard Woliver say, "What's that you say?" to which he replied, he had stoned the cars, and would do so as long as he staid in Michigan Centre; Mr. Cable was with me; the Monroes went the other way and were not with us; we went near Filley's house and saw L. Champlin standing on the steps; it was about 10 o'clock after the cars had passed. He asked me once if I was a railroad spy; said he heard that I was, and that the company would be glad by and by to pay up for cattle, or if they did not they would "catch hell."

At one time at Toll's store, heard Filley say the night the cars were stoned, the Price boys were present; this was a night or two after the stoning west of the Centre. Heard conversation at Filley's between Williams and Woliver, when they accused Henry Holden, Gillespie and Jack Van Allen of being spies. Woliver said that if they could catch them down there, they would take their heart's blood out of them; Williams said he would do the same.

Cross examination by Frink—I was about 35 rods from the road when the cars were stoned; the cars were some 80 rods west of the Centre when they were stoned; heard the stones strike the cars before we came down stairs; some ten minutes after, when I left the men, they went out towards Filley's; we heard glass jingle when the stones were thrown; we had been to bed and got up and leaned out of the window, and heard them the second time. I knew Holden, but did not know his business there when he came down. It was on a subsequent occasion that I heard the talk about the spies; it was at Filley's bar-room, and I was sitting on the steps. Filley, at that time, said he would do the same, (take their heart's blood,). I suppose it was Williams in the conversation, as that's what they called him; never spoke to him; commenced to watch the road after I first went there to cut bushes; staid there night times, and day times at Jackson. This was after I was cutting bushes; made one affidavit of this matter at Marshall last fall; have heard the affidavit read this morning by Van Arman.

Direct examination by Frazer—My recollection of what I have sworn to, is not based upon the affidavit made at Marshall, but upon my own memory of the facts when they occurred; went to the Centre 7th

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June, cut bushes two or three weeks, and was watching three or four weeks longer.

James Mitchell, sworn; To Van Arman—Live at Gidley's station, oversee repairs on the track; in August, '49, was near Michigan Centre; know Jack Freeland, heard him speak of spies on the road, no one else present; he said if he catched spies on his premises he would shoot them as quick as he would a bear, because he did not know but they would steal something of his; said obstructions had been put upon the track, and might be again if the company didn't pay up for the cattle killed. Know A. Filley. Once saw an obstruction placed upon the track. I was at work for Shoemaker at the mill in August, '49, at Michigan Centre; as I was going home about 5 o'clock, I had occasion to stop by a wood pile, and saw two men put a railroad tie across the track—think one of the men was Filley—the other was Caswell; they were about ten rods off; I went and took it off the track; the two men went towards Filley's barn; know most of these Defendants, (naming them,) while at Michigan Centre have seen them occasionally, gathered at Filley's tavern.

Cross examined by Frink. I thought it was Caswell with Filley, by his voice—did not hear the other man speak. He had on a vest, no coat, a fur hat, and I think grey pants—think I had seen Filley wear such a suit, did not take very particular notice of the dress; can't say positively it was Filley and Caswell, but thought so at the time, and do still.

Then the Court took a recess for 20 minutes.

AFTERNOON SESSION.

Levi Carter sworn; By Van Arman—Live in Detroit, employed as conductor on freight train for the last two years; remember an occurrence at Michigan Centre in September or October last—an attempt to uncouple the cars. When we got to Grass Lake, Mr. Pease, agent at Grass Lake, told me he expected some trouble ahead, and we ran very slow to Jackson. I was on the back of the train—the engineer gave me me signals to put on the brake five or six times to stop and remove obstructions. Stephen Chapman was the engineer, and Marony one of the firemen. About half a mile this side of Michigan Centre we stopped, and I saw two or three persons going from the side of the track; the train went 15 rods further, and saw two other men, one on each side, walking with the train, which was going very slow. Opposite Filley's I saw four persons; one of them came up close to the cars, and spoke to one standing twenty feet back, and told him there was a man on the train—referring to me; heard one of them speak of stones, but they did not throw any; don't know who the persons were—have several times been obliged to stop and remove obstructions in that vicinity during the past two years; was baggage man on passenger train in '48. For a long time were obliged to run a hand car ahead of the passenger train, and have three times got off in one night to remove obstructions, such as rails, old ties, strap iron, &c; the passenger train had to run very slow; this was between Grass Lake and Jackson; during '49 have known the track to be obstructed as often as a dozen times.

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In 1850, I run a freight train. The passenger train was stoned in June, 1849, some fifteen rods this side of Leoni village—heard stones strike the car, and some struck near where I stood. I heard a screech of a woman in the cars—went back into the car, and a lady handed me a stone which came in and lodged in her lap.

A gentleman in the next car was badly hurt by a stone which hit him on the breast—stones lodged in every car; several windows were broke. Was on a freight train last fall when it was stoned in Leoni village. I was in the car back of the engine, and saw nearly a dozen persons throwing stones at the engine. I could not recognize any of them. I know but one of the defendants, Ammi Filley—the country along where the depredations were generally committed was covered with bushes, and they could easily conceal themselves.

I recognise the countenances of several of the defendants, by having seen them along the road at the Centre and Jackson—have frequently seen assemblages at Leoni and the Centre.

Cross examination waived.

Wm. Clark sworn; To Van Arman—I reside in Illinois, formerly lived in Detroit, and run an engine on the Central road for five years, including 1848 and '50; was on engine on passenger train—run day and night; was on the cars this side of Michigan Centre marsh two years ago this month, when guns were fired at the cars; was coming east; there were some four or five or more guns or pistols fired at the cars, from the north side of the track, some thirty or forty feet—saw the flash of the guns but could not distinguish the persons—the guns were ranged at us; one of the feed pipes showed the marks of a ball. At another time, about a year or two ago now, the cars were stoned three times, twice near Fitch's house, and once west of Leoni village—thought some of the stones came out of Fitch's peach orchard, it was in the night—saw the mark of a brick on the tank, 5 inches long, and a stone struck the boiler—saw the windows broke in the passenger car.

At another time was stoned 200 hundred yards west of Fitch's house, and another time about half a mile west of Leoni, near where the Gazelle was run off; the stones came from the north side of the road; the bushes were thick on both sides of the road; never but once was stoned except along there—that was near the Bath mills, west side of Jackson co. Have met obstructions on the track a good many times in 1849—most always between Jackson and Grass Lake—they were generally the thickest between Fitch's and Filley's houses, and along that vicinity; once found a dead cow drawn on the track just west of Michigan Centre, once found the switch turned at the Centre, on the 28th or 29th of October—the east end of the switch; was with the engine Rocket; it tore the side track and came near capsizing the locomotive; the switch could not have been turned by accident; we were detained from 9 or 10 at night, until the next P. M. at 5 o'clock; several men came up after we were thrown off—Mr. Holden, of Jackson, was among them. Fitch was not there; saw him the next day, and he asked Mr. Minch how bad the engine was hurt. Filley was there the next morning; have run from Grass Lake to Jackson in 45 minutes, and have been 1 hour and 25 minutes doing it—we run slow and run

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a hand car a head to avoid obstructions; did not do it at any other place on the road, as we thought we were safe when we got past that region.

Cross examination waived.

Barney Culver sworn; By Van Arman—Lived near Jackson; am 30 years old; know Minor Laycock, he stopped at my house last winter. Know Mr. Fitch. Heard Laycock say last spring that the company did not use him well when he came to work on the depot; I said he had better be careful as he was making hard threats, and they would be on his track. He replied he did not care, he was not afraid, for all he had said to any person was, that Fitch handed the pistols out of the window to him and two other fellows, and told them to shoot, d——n 'em, but they did not shoot.

Seward and Frink objected to this evidence on the ground that the conversation took place since the act alleged in the indictment—the burning of the depot in this city. The statement also refers to a past transaction; distinct from the offence charged.

Argued by Van Dyke, that it is competent as showing that Laycock belonged to the conspiracy.

Court ruled to admit the testimony.

Heard Lyman Champlin say if they did not pay for the old gray mare they killed, she would keep the railroad wood and fence on fire. Had heard him say before that they had killed a man for them. This was a year ago last spring.

Wm. Monroe, sworn, examined by Van Arman—Live at Wayne; for 5 years a farmer; know Jack Freeland by sight, he lives about 1 mile this side of Mich. Centre. I was at work on the road when the Gazelle run off in August, 1850. I was at Michigan Centre; saw Freeland when we were getting the Gazelle on the track. Afterward saw him towards his house; he asked if the two freight trains did not run together on account of the Gazelle running off. He said he supposed the damage of the Gazelle was $8,000 and $6,000 to the two trains running together. He said they had better pay for the cattle killed, for they were all opposed to the road for 10 miles back.—Said if the spies had been along there the night before they would have got blown over, and that he would shoot one of them as quick as he would a squirrel; said he had a gun and kept it loaded in his house for that purpose. No one but a little boy present at this talk.

Cross examined by Frink—He did not say the spies had been robbing his garden and stealing from him. I first told Amos Taylor and Mr. Spaulding of the conversation with Freeland. I boarded at Holmes' at the Centre. I had a brother there also.

Nathaniel Huntington sworn, examined by D. Stuart—Reside now at Jackson—lived in Leoni for 4 years until 20th April. Know Minor Laycock; heard him say he went to Fitch and asked for guns, and Fitch asked him what he wanted of them; he told him he wanted to shoot the cars. I told him I thought he would get into trouble, and he said there was no danger as there was no shooting that time, but said there was afterwards. Remember the burning of the wood pile in Oct. 1849. I helped put it out; was coming home from Jackson; the wood was near the line between Jackson and Leoni. Another

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fire was set about ¾ mile east. Wm. O. Stone and C. Laycock were with me in the morning after daylight. Fitch, Filley, E. Champlin and Mr. Broniger, came up to us. Mr. Stone told those who come up we had a hard night's work, and called on the cars for help, and they only stopped and gave them a damning and went on. Champlin said that was right, we ought to be d——d, and d——m those who would'nt d——n us. Filley said we ought to be burnt up with the wood, then the company would pay our wives half price for us. They blackguarded us for putting out the fire and watching the road. I told them I thought it was my duty to save property when it was being destroyed.

Fitch said he never had put any thing on the track and would not take any thing off if he saw the cars coming with Brooks and the whole company in them, and it knocked them all to hell. While we were putting out the fire we heard walking and whispering in the bushes near us; but could not see any one.

Cross ex. by Frink—This was in the fall; while there Champlin said he had put out fires for the company, and never got thanked for it; the first fire began about 10 in the evening, the second three fourths of a mile east towards morning. The wood was about 1¼ mile west of the Centre, and belonged to the company.

Wm. O. Stone sworn, to D. Stuart—Reside at Jackson; remember a pile of railroad wood being set on fire west of Mich. Centre; was then with Houghton and C. Laycock. Fitch, Filley and Champlin came there about daylight when we were putting the fire out. I told them I had been to Jackson for help, and also stopped the cars to get help.—Fitch replied I ought to be burned up with it and the road would pay my wife half-price for my ashes.

Cross examined by Frink—Only one of them told me I ought to be burnt up, &c., Fitch came there between day break and sun rise; they said they were hailed by the train and told that there was fire in the woods.

Wm. D. Wescott sworn—by Van Arman—Reside in Detroit; came here 26th Dec. last; prior to that, had lived in Jackson county; went there in March, '49, remained there until last Dec: I know most of the defendants: Fitch, A. and G. Filley, E. Champlin and two sons, Dr. Moulton, Tyrrell, Grant, Barrett, Hay, Penfield, the Prices, Laycock, Williams, Burnett, Dr. Farnham, Warner, Lemn, Freeland, Beebe, Welch, Stone, Lang, Palmer, Ladue, Gleason, Mills, Barber, Erastus Smith; the balance of defendants, don't know, only by sight; know Fitch since the Lester case at Jackson; while at Jackson, I was clerk in American Hotel for Hayes; was first introduced to Fitch in 1850, after I left Jackson and went to the Centre; Fitch was present at the law-suit in Jackson. What was the subject matter of that suit?

Seward and Fitch objected to this question as irrelevant and collateral.

Van Arman and Frazer in favor of question; they wished to show that the suit related to aggressions on the road, and that Lester was arrested, and that Fitch was then actively engaged in rendering "aid and comfort" to the accused, according to the bargain among them, to swear for, and sustain each other whenever detected.

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Stuart proceeded to read from the reports in the Advertiser, touching a former ruling by the court.

Defendants waived the objection.

Witness—Saw Fitch very active at the trial, and he said Lester was a persecuted man; Lothrop, Attorney General was at Higby's office and heard Fitch make similar remarks; heard him and Mr. Burnett have a talk in the evening.

Mr. Seward gave notice that he should object to all this testimony as irrelevant, and should insist that the plaintiffs could not hereafter show that the statements of Fitch,here drawn out by themselves were false.

Van Arman said he thanked him for the notice, but they would take care of that hereafter; he apprehended he could show Fitch's actions at that time, as far as corresponded with his former pledges, and a general understanding among them to stick by each other.

The court said they could not undertake to say at this time whether it would be irrelevant or not; it would be admitted.

There was a talk in the evening between Burnett, Fitch and Attorney General Lothrop; heard Fitch say that Cook, the railroad spy had perjured himself; this trial was about August, 1849. When I went to the Centre, in March 1850, I went to my father-in-law's, Mr. Wells, and was introduced to Fitch by my brother-in-law, Joshua Wells, and also to Filley; stayed there two months and formed the acquaintance of Fitch, Filley, Grant, Moulton, and most of the others before named.

Here the court adjourned to June 17th, at 9 A. M.

THIRTEENTH DAY—MORNING SESSION.

TUESDAY, June 17.

W. D. Westcott—testimony continued—Examined by Van Arman. I stayed in the spring of 1850, at Michigan Centre, and returned to Jackson in the employ of Hayes the 2d of May and stayed with him until the 19th of August. My wife boarded with her father, near the Centre, and I went down about once a week, Sundays. I met more or less of the defendants at the Centre, every Sunday; saw Fitch, Filley, Corwin, Price, boys, Grant, Moulton, Nathaniel Credit, and occasionally Williams and the Champlins: during that time they talked of the road, sometimes in private squads.

During March and April while I was there, had frequent conversations with Fitch about the road. In March 1850, he told me what had been done in '49; said the boys placed obstructions on the track; the way they did it was by being secreted in the timbered land between the Centre and Jackson, after the hand car passed they would rush out and place things on the track, bofore the passenger train came up; also said they would place pieces of strap iron between the joints of the T rail and cover them with bushes and branches of catnip; said also, the boys had stoned the cars, and he advised them not to do it for they might hurt some one.

During the month of April, '50, he said to me that Elder Limbocker had given the company much trouble, and he had talked to the Elder about it, and advised him not to stone the cars: but said the Elder was

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a pretty hard case, and would not hold up. Spoke in a jocose manner and laughed heartily about the idea.

He spoke of guns being fired at the cars, and said it was done by Elder Limbocker, of Leoni, and priest *Foster* of Jackson; thought they were hard cases to do it, and said he had labored with them to prevent it, but they were such hardened cases he could not convince them of their evil ways, and they refused to be converted.

Said one engineer had been frightened off the road by the depredations committed along there. In the last of April said it was the only alternative left to get pay for cattle killed, and said Brooks had sent out in 1849 a circular which was an insult to the people, which added insult to insult, offering half pay for cattle, and that Brooks need not think the people would ever submit to such insults, and it was the only way left to get redress and bring them to terms.

During the summer of 1850 when I came down on Sundays, sometimes talked it over with Fitch; talked with him about the Gazelle's running off, when he said the locomotive had got dry and having no pump aboard was forced to go down into the marsh for water; said "we have knocked 'em to the tune of $6,000."

I went to Michigan Centre to live about the 10th of August, 1850, and lived with Mr. Wells, my father-in-law; went for the purpose of ferreting out the offenders on the Road; generally spent most of my time days, at the Centre, and frequently watched about there nights; generally stood at the culvert at night until both trains had passed.

I remained here from the 19th of August until 26th Dec., when I came to this city. I took measures, such as talking against the Road, to gain the confidence of the defendants; said the road was a monopoly; talked in this way to Filley, Fitch, Barrett, Credit, Grant, Champlin, Freeland, Corwin and others. I mentioned personal difficulties with the road, in relation to a pile of wood on fire west of this city, when I refused buckets, and my team and assistance to go and put it out. Fitch called me "one of the boys," and all took a drink. Nearly all the other defendants named were there, and several others. This was at Filley's tavern, about a week after I went there.

I think the lawsuit with Barrett at Leoni, was on the 13th of September, after I went there. I was intimate with Fitch; he frequently invited me to his parlor to eat fruit and drink cherry whiskey and brandy, and he frequently called me out one side from the crowd, and talked privately together, aside from these defendants.

In the fore part of last September, near his house, he told me he had written to a friend of his in Chicago to get some handbills printed, warning the people not to travel on the road, as obstructions were daily placed on the road, endangering their lives, and that within two hours after his letter was received in Chicago, 200 of the bills were struck off and in the hands of the steamboat runners, and consequently some 500 or 600 persons took the lake route to Detroit. Said this was the only way to bring them to terms and get pay for cattle.

He spoke of Barrett having a cow killed, and advised him to sue for it, but said he never calculated to come to trial, but should bring three suits to call off the attention of the company and the spies; as they were watched so d—d close they could not do any thing in the way of

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obstructions; that it was well enough to *fuss* a little in the law to draw their attention, and the spies might leave, when they would have a "grand smash" worth a dozen lawsuits, and the company would by and by begin to think "there was a God in Israel." This was a day or two before the Barrett lawsuit, on the 11th September.

On the 13th, day of the suit, I went down with him and he talked in a similar strain; said it was the only course, which, if kept up, would bring them to terms by and by.

He said they had engaged Lemn, of Jackson, to conduct the suit—that so long as the company persisted in its half pay offers, they must dog them in this way or some other.

Said they did not intend to try the suit, but were going to *fuss* a little in the law to make the company think they were going to law with them for their rights, and stop depredations. This was to blind them and draw off their spies.

Dr. Mounton, Williams, Barrett, Lemn, of the defendants were at the law suit; saw Woliver, Spaulding, Livermore, of Jackson, there. Lemn acted as counsel for Barrett; Fitch was bitter in his remarks, and said it was infamous for the company to allow a suit to be brought to recover pay; this remark was made in Quackinbush's bar room, Fitch was active—Livermore for Railroad, was anxious to have the suit tried that day, but it was adjourned, and I heard Mr. Barrett say the suit was subsequently withdrawn or abandoned.

This testimony with regard to Barrett's assertions objected to by Seward and Frink, as it was a matter of record.

Objection overruled and ruling excepted to.

I was taken sick and Fitch was anxious for me to stay, as they want-to take me into the 'lodge' that night, there was going to be 'something up,' and wanted me to see it; it was not with regard to a theatrical performance that evening, but with regard to the road; he asked if I had not better ride to the Centre with Spaulding, and I told him I did not like a Railroad man well enough to ask him to ride, and hated to be seen in his company, but told Fitch if he would ask him I would ride up with him rather than stay.

Told Fitch I did not like Spaulding, as his nose was in everybody's dish. I, next morning, saw and asked him 'what was up,' and he said they had a 'fuss, the night before, near his house; an engine was obstructed, and said they laid it to me, and said 'd—n 'em, they laid it to me, but I told them I did not get home;' we walked up to the spot, and he explained how the timbers were placed, to break the lamp, which he said must have cost $100. Before I saw Fitch, Hay told me of the accident; heard that Lemn came home with Filley, and staid with him that night; Fitch said, about the time the locomotive struck the obstructions, he had just arrived, and left his horse with his boy, and he and others walked up the track, and the conductors used abusive language to him, and while there, said he went round and set the brakes on the wheels to see the fire fly when they passed; Williams has also told me that Fitch put on the brakes, and laughed at it as a joke. F. said he was at one time accused of stoning the cars as they passed his house, but said it was a d—d lie, as he was up stairs looking out of the window at the operation. Fitch said it was a lucky thing that he dis-

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covered who I was at one time when I got off the cars, as he took me to be a spy, and followed me some way to knock me over, but finally discovered who I was; he first thought I was a spy; this was one time when I got off, and was going south to my father-in-law's in the evening.

At one time I saw two men come out of Fitch's house, and go east, towards Leoni; I followed them by Toll's store; I afterwards went to Fitch's back window, and there overheard conversation between him and his wife,in which he told her they were watched so close they must hold up for a few days, until they were settled down a little.

He said to her the boys had lately knocked the company to the tune of $20,000, and he should not think strange if some of their men were along in a day or two to compromise with them; I got in round the house through the picket fence, took out a pin, removed a rail and crept through.

I once spoke with Filley at his house in the fore part of Sept. last; he spoke of their lodge; was sorry I was sick; that hewas anxious to initiate me; said they were going out cooning and found the road was the best ground to go on, that the Gazelle was a big coon they caught the other night, but they had lost its tail, but d—n 'em we will have that soon—meaning the train; said it took a good many men to get the coon on the track again, and he did not want anything better than an axe and a crow bar to shoot a coon with, and spoke of making switches by breaking rail chairs and turning the track, sometimes called them the Leoni switch, and patent switch, generally the "bull switch."

Once overheard a conversation between Filley and Corwin at Filley's house, I stood where I could hear as follows: Filley wanted C. to go west and throw off the cars near the white bridge, and if he could not do it there to go still further into the timber land; Corwin objected to taking the west route, and said he would rather go towards Leoni, and could have Williams and the Price boys, who lived in that direction; Filley said to him do go, go east, and me and my devil, meaning Woliver, will work the west end; Filley told him to make a sure thing of it, and C. replied don't be alarmed about us, we did it up brown before, and next time I'll be d—d if they raise their old smoke pipe as easy as they did before, referring to the Gazelle; have heard Filley call Woliver his "devil."

At Toll's store heard Barrett say he had given the company hell, and he meant to do it again if they did not pay for cattle killed—that he meant to raise another engine soon; said he and his boys were too old for them, they could not catch them, and that Fitch could always get witnesses to swear them clear.

On Sunday at Filley's, there were a good many there from Leoni village; A. M. Sackrider brought up a load, nearly all strangers to me; that day heard conversation between Williams and Filley; W. asked F. for money, and F. replied, "I thought that this Gazelle matter was all settled;" W. replied he thought there was something due him yet; Filley said to him, Fitch had paid him $10, and he (Filley) had paid him $12, and wanted to know how much more he claimed in the Gazelle matter. W. said he would leave it to Filley, and F. asked him if $3 would be enough; he said he supposed it would; at this time

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Sackrider called them in to get drink, they were in the yard and I was round the corner of the house 6 or 8 feet from them when I heard the conversation; I went into the bar-room then and sat down; they came in, and Filley asked me to change a $5 bill, which I did, and he gave Williams $3. Joshua Wells was there at the time, also Sackrider and others; it was a general day of carousing and drinking. When some of them would get into the wagon to go home, the others would take them out by force and bring them in and pawn them at the bar for something to take. It seemed they had a duck pot-pie that day; saw Fitch on that day, and I was at Fitch's house on that day and had a talk: he said those boys were up from Leoni that day for the reward; said the company had offered $1,000 reward for evidence that would convict him, but they never could do it; said Spaulding had offered rewards, and said supposing he was arrested, he could find witnesses enough throughout the State, if there was not enough in Jackson co., to swear him clear.

Told me if I or any other man should ever come out as witnesses against him he would shoot me or him, and if he was deprived of doing it, by G—d, he had friends enough that would do it; said they never could get a jury in Jackson county to convict him, he had too many friends scattered about. Said he had just made an estimate of the damages sustained by the road on account of the cattle killed; said he had found out the number of cattle killed and made a fair estimate of their value, and divided the loss of the company by it, and it had cost the company $450 a head. This was at another conversation. Said that by the "boys" continuing these depredations it would divert the travel from the road and bring them to their milk. Once heard Filley say at his house, a day or two after the cars had been stoned, that the d—d Railroad co. had sued him for stealing timber, "and G—d damn 'em, before ten days are over they will wish that a Fitch or a Filley had never been born." Heard Filley say he had caused to be printed 500 handbills and sent them east to his friends in New York; and cautioning the public against coming over the road, stating that the opposition was so great that the co. were obliged to place 100 armed men along the line through Leoni to enable them to run their cars through the town. Heard Fitch say he had advised the boys not to throw the trains off in the dry marsh, as that would be too bad. He spoke in a light, jocular manner, appearing to be anxious they should run them off there. Heard Williams say at Leoni to Kirkendall, that he had given the cars hell several times and would do it again.

Kirkendall said he knew where there was a good place to sink an engine and would turn out at any time to help do it.

Who did Williams say planned the throwing off of the "Gazelle?"

Objected to by Frink, for the reason, 1st. it is not competent to prove what one of several co-conspirators may have said of any act as having been committed by any other party; because it constitutes no part of the *res-gesta.* It relates to an act done long before; it is in the nature of a narrative and not a declaration in relation to a pending act, not yet accomplished. The only reason for admitting the declaration of one of several engaged in a common confederacy is to show the quality

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of the particular act. In other words, that its object was to further the common design. No such purpose can be had in view by this question, but the real object must be to show that Fitch was connected with an act that had been done. Therefore it is not admissible; 2 Russel on crimes, 697.

After further argument by Seward, Van Dyke, Frazer and Van Arman, the usual hour having arrived the court took a recess for 20 minutes.

AFTERNOON SESSION.

By the court—The question is proper. I cannot anticipate precisely what the answer may be, neither can I know what may be said by witness will relate to a conversation before or after the Gazelle run off; if before, it is competent; if after, it may be competent so far as it may show Williams' guilty knowledge, or his participation in it; but so far as it may affect others who may be implicated, or who made the confession to him, I am, for the present, at least, inclined to rule that such statement would be a mere narrative of past transactions, and not evidence against such third person.

Mr. Seward noted an exception to the decision.

Testimony resumed—Williams told me Fitch planned the throwing off the Gazelle—the plan was made by Fitch, and Williams got the Price boys to do it; said he went home and went to bed, so that he (W.) could come up as a witness in favor of them, in case of trouble; he was going to swear that the Price boys staid all night at his house; said it was fixed for the passenger train going east, but that was behind time, and the train from the west came along first and run off; the bank at the place was some six feet high; Barrett lived at the Centre, and was with the rest almost every day. After I had been back there a while from Jackson, in the Fall, I was on the most intimate terms with Fitch, the two Filleys, three Champlins, Dr. Moulton, N. Credit, W. Corwin, Jack Freeland, Williams and the Price boys, and had their utmost confidence; also with Gleason; he lived there in the Spring, when I wast first there; also saw Mr. Showers there; Gleason used to come down frequently, on Sundays, in the Fall, when, after he went to the prison to work, in Jackson; have seen those named all there at different times; have heard Fitch, Filley and W. Corwin, call themselves the "Leoni band;" Fitch said, "Leoni against the world." Have heard Fitch, Filley, Corwin and Freeland say they were banded or conspired together for the entire destruction of the road, unless the company paid for cattle and came to their terms.

In a talk with Fitch in his parlor one day, he told me that he and the boys were determined to bring the company to terms before the State Fair was over—he meant to show the people of Michigan that the feeling against the company did not exist alone in Leoni—they meant to throw off the cars on the curve, on the down grade west of Jackson, and at the white bridge between Jackson and the Centre, and at the dry marsh just east of the Centre, and at the high embankment east of Francisco's Station.

This conversation took place a short time before the State Fair at Ann Arbor in September last. He said if they could succeed in kill-

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ing from 100 to 150 passengers during the Fair, it would bring the Company to terms, if not, he wanted to know what in God's name would? If he failed in that, God damn them, we will burn them out. He also stated he would give me or any other person $1000 to burn four depots, viz: at Detroit, Ann Arbor, Jackson and Niles, or that he would give $250 for burning either one of them. He said there were men among them who would do it, but thought it had better be done by some one not living at the Centre, and thought I would be a good hand to do it, as I had a good deal of business at Detroit. I told him that it was rather out of my line of business, and besides that I was too well known along the road, and gave this a reason why no one at the Centre should do it. He stated he could prove any thing he wanted to. Heard Filley speak of burning the depot at Jackson. Said to Corwin the d—d railroad had sued him for stealing timber, and that they would want more before they got through with him, for he proposed to burn the new depot at Jackson. He proposed to Corwin to burn it, and said he had been by it and saw a good many shavings in it, which would make the work easy.

Did you when you heard these threats to burn report the fact to the agents of the road?

Objected to.

Van Arman said they wished to introduce this testimony, not to fortify the evidence of the witness, but to show that by his reporting the facts, the Co. took measures to frustrate the designs, and by sending out a large force to guard the road. That deft's discovered small squads of men in the localities named by Fitch, and therefore had to abandon their designs.

Mr. Van Dyke said he would look up the rule on the point, until which time Mr. Van Arman withdrew the question.

Subsequently, I heard Filley say that the Co. came out with an extra car and dropped their d——d spies all along the road east of Leoni and west of the Centre, and they could not do any thing; he said they came out on the 2d day of the Fair; I knew they did send out such extra train.

Heard Filley, Corwin and Barrett, also mention the grand smash they intended, during the State Fair; in conversation with Filley, Corwin and Woliver, near the road, front of Filley's barn, Filley stated, if they could only succeed in getting an entire train off on the dry marsh, there would be no need of coffins; they would be buried deep enough without employing a sexton; Fitch told me the number engaged with him were numerous, and were a little suspected; said he had friends who would stand by him. As such friends, he mentioned the following names:

Harry Holcomb, Harry B. Lathrop, Alanson H. Delamater, John S. Hurd, Pat Morrison, John Ladue, Cann boys, O. D. Williams, and then remarked there were a host of others, and said he would defy all Hell to convict him; this was in his sitting room; and in the same conversatian as about burning, he said also that he never would lack for witnesses; that they got Lester out of a scrape by false swearing, and could get himself or any one else out. He never lacked for witnesses.

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Heard Fitch say he was determined to make the Co. pay $100,000 unless they would come to terms; that they never would give them any peace until they came to terms. Have heard O. D. Williams mention a plan by which they proposed to make the $100,000 bonus proposition to the company, through their lawyer, Mr. N. H. Joy, of Jackson, partner of Mr. Lemn, one of the defendants now on trial.—When anything occurred to the cars, Fitch would generally say Elder Limbocker had been giving them hell again. Heard Filley say that when accidents happened to the cars he generally gave them credit for more or less "on the old account." When the cars were stoned, he gave them credit for $1. When the Depot in this city was burnt he said he had given them credit for $25!

I saw Woliver, knew him well, was there the day he and Filley settled, and they had some difficulty. Filley said Woliver had had considerable "extra" liquor, and proposed to call it a barrel and owe W. a dollar as balance. Saw Fitch call Woliver into his house the day he left.

Filley told me Gleason had been down, and said I was a d———d railroad spy and ought to have my throat cut. Said he had cautioned G. against making such harsh remarks, and asked me if it was true.—I told him no. A few days before that, G. and Barber came down in the evening while Mr. Dixon and Filley were playing euchre at Fitch's. G. asked Fitch into another room—soon Barber was called in, and after a while Fitch came back and G. and B. went out another door and went off. Fitch came back and set down to the card table, and appeared very cool and reserved towards me.

Seward objected to the question and answer, and moved it be stricken out.

Court overruled objection and deft's noted exception on the ground that it was testifying as to the manner of a witness.

We only played one "rub" that night, and Fitch soon said it was time to adjourn; it was earlier than we usually quit on such occasions. F. never asked me to his house but once after that, and always rather avoided me after that.

After that he never asked me to his house but once, then he asked me if Brooks had employed me as a spy. I told him no, and he asked me to explain the letter of Brooks to Goodwin, Agent State Prison, which Gleason found. I told him I had been employed by Brooks to look up a trunk of a Mrs. Fanning, which she pretended to have lost. The trunk was formerly left with me at the American Hotel. I told him this woman had made an affidavit at Marshall and employed Van Arman to swindle the Co. out of $40 or $50, and as I knew something of the trunk, they had employed me to look it up and bring the woman to justice. He did not appear to believe my explanation, and said he thought the Co. had bigger business to look after, and thought I was a spy, as he had seen the letter by Goodwin from Brooks asking that I might be absent from the post of gatekeeper which I had just obtained at the prison. After that they all seemed to cut my acquaintance, and Fitch said if ever I appeared to swear against him he would shoot me from the stand, and if he failed in that, said he could get witnesses enough to swear me to h—l, said he could get witnesses to impeach

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the best man in Jackson co. I heard of a plot to assassinate me at the Centre; I went to the Centre to find out what was going on: I crawled through a hole under the bar-room floor; it was in the evening, in Nov., and the Price boys, Wm. Corwin, Filley and Credit, were in the room. I remained under the floor a short time, and Fitch came in; I heard the Price boys say they were d—d fools for letting me slip through their fingers; that I was the only man that could injure them, and that they had made d—d fools of themselves in confiding so much to me, and I must be laid out. They spoke of a former plan which failed; and said among themselves there must have been a traitor in the camp, or I would have taken the seal they designed for me.

I had on a certain occasion been invited in the morning to come down in the evening and play a game of eucher; I went down and found Jack Freeland, Corwin, Prices, two Champlins, Barrett and N. Credit—Filley came in and said every thing was ready to play eucher in the other room, and invited me to go in, and wanted me to take the seat next the window, looking out on the stoop; I did not do so, as I had been apprised that if I did, my life would be in danger; Sherman had told me so.

Seward moved to have the last answer stricken out, as hearsay evidence.

Stricken out as far as "Sherman" or the name of the informant.

Exception noted by defence.

When I went into the room, found those named there; Caswell and Wells were with me, by my request. I sat down on the side of the table and not where they wanted me to.

I accused Filley, Corwin and the Price boys, of conspiracy to take my life. I said it to Welch, and he told Fitch; Fitch afterward asked me about it, and I told him it was a cowardly act; he pretended it was all humbug, and we had some words. I told Fitch they must let me alone, and that they never could drive me away by such cowardly means, and that I had the means to expose them, and that if they did not let me alone I would expose them.

We walked out towards the road, and he said there was no use of our having any difficulty—that he would see the boys and have it all straight—he would rather give $100 than to have any diffienlty with me: he said he could fight one man, but to to fight the d—d Railroad Co. was more than his constitution would bear; said he would see the "boys" and have them "all right." I remember once when Fitch predicted the cars would be detained; I came down in the morning to take the cars for Detroit, and Fitch said I need not look for the cars until the sun got over past the meridian; they were then due from the west; it was soon after sunrise in the morning he said it in reply to my remark that the cars were rather behind their time; the cars did not come along that day until nearly 6 P. M.; it was the same day the cars were run off at Galesburg, and that caused the delay.

I heard Fitch say when a luggage car was burnt up, that the company lost $12,000, and a woman lost $4,000; Filley said the Co. after getting a few more such slaps would begin to think there was a God in Israel.

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Heard Corwin, Filley and Williams state one evening, in a conversation, that if they could get the cars off at the high embankment, that while the live ones were looking at the dead and mangled bodies, it would be a d—d good time to feel of Uncle Sam's mail bags.

This conversation was about the time of the return day of Barrett's law suit at Leoni; they also said, if they could succeed in detaining the mails, the Co. would be liable in damages to the U. S., and would have to abandon their contract, or be docked in their pay.

One evening when I was at the Centre, crossing Fitch's deer park to get up towards his house, I heard some one say, there was a d—d spy, and whistled for the dogs, which were set on me, and one man also chased me into Wolf Creek; I think the dogs could not get over the fence. I found the fording rather muddy, nearly up to my armpits. I then went home, and my wife washed my clothes.

Here the Court adjourned until the 18th at 9 A. M.

FOURTEENTH DAY—MORNING SESSION.

WEDNESDAY, June 18.

Wm. D. Wescott; direct examination resumed by Van Arman—Overheard a conversation between Fitch and Laycock in February last, at Johnson's Hotel in this city. Fitch told him he must be careful and not reveal anything; he asked him what he had sworn to in an affidavit before Emmons a day or two before; he replied nothing that would injure him, (Fitch); Fitch said that was right, so long as he remained true he would be safe.

Before Gleason came to the Centre with the letter on Sunday, I had agreed to take Filley's tavern; after that they had tried to get Toll to take it. Fitch had often before that urged me to take the tavern, and said I would make money; said it would accommodate his friends to have it kept up better than Filley kept it. I objected to taking it so long as the Filley boys and Mrs. Filley remained there, and Fitch said he would provide places for the boys, and the old woman was to have a room, but nothing to do about the house.

I remember a fight on the ball alley between Palmer and Bill Corwin; Sherman and Holcomb were there, and took Corwin's part. After they had parted them I made some remarks and Fitch said I had better be careful what I said. Fitch and me stood at the door. After that I saw Sherman and Bill Corwin go into a shed near by.

I heard Filley say he once chased a spy through Wolf Creek, and said he fell down and lost his stick or he would have caught him.

Saw Fitch in this city last February conversing with Joshua W. Wells at Johnson's Hotel; did not hear any of the conversation.

I know Joseph Dows; saw him and Fitch together just going into the Pantheon saloon, below the Michigan Exchange; it was in the forenoon between 9 and 10 o'clock; they stayed there about an hour; Fitch came out a little first, and went over to M. W. Warner's broker's office.

Soon afterwards Dows came out and went down street. I next saw them together about the 12th of February, on Jefferson Avenue, on the corner of Woodward; I was dressed in disguise, they were conversing; they went from there to the house of Washington Gay, together.

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Frink objected to the testimony, on the ground that it relates to things that transpired since the act charged in the indictment, the burning of the Depot.

Van Dyke said they offered it to show that Fitch was acquainted with Gay; that he had been at his house; Gay being originally indicted with the other Defendants.

The Court over-ruled the objection; the testimony may be taken to show intimacy of Defendants.

Witness—followed them to the house of Gay; they went up Jefferson Avenue until they came directly to the street that led to the house, and turned north; I went to within a few yards of the house, and saw them go in on the west side. I never, on any other occasion, saw Fitch and Dows together. When I have mentioned conversation with Filley, I meant Ammi Filley; Gay lived in a two story house—a door on the south side and one on the west, with a stoop, or steps, at the west street; don't know the name of the street where the house stood; it was up towards the barracks, and was the house Gay occupied.

Cross-examined by Frink—Before I went to Jackson I lived with H. R. Andrews, in this city, about 10 months; before that I lived in the town of Nankin, in this county; kept a hotel there; was there from '43 to '48; before I went to Nankin, I lived for 8 years at Mackinac. I first went there as clerk for John Ord & Co; after two years went into the mercantile business for myself.

For what reason did you leave there?

Objected to.

Seward said the object was to lessen the credibility of the witness.

Question admitted.

Answer—I was unfortunate in business and failed. Have several times been back there. There was a criminal indictment against me for forgery. I went to work for Andrews in 1848; when I left he gave me no particular reasons for my leaving; don't remember that he told me he had understood I had a bad character; he said he was satisfied with the manner in which I had conducted his business. I entered upon Mr. Hayes' service in the spring of '49, left there about March 1st, 1850, and went back there about the 2d day of May, 1850, and left again about the 19th or 20th of August last; I left then to work for the railroad company; was first introduced to Fitch in March, 1850; during the two months I was there was rather intimate with Fitch, Filley, Barrett, Holmes and Moulton; saw Williams, Corwin, Freeland, the Prices, and the Champlins, but was not so intimate with the last named; think I heard Fitch mention railroad matters once, in March. I expressed sentiments against the road; saw Fitch, Filley Price boys, and Champlins, in squads, talking together during the two months.

It was in March that Fitch told about obstructions on the road between the hand car and passenger train; Filley and one or two others were present; don't remember, but think it was not on Sunday; he mentioned no names, but said the "boys" put the obstructions on; have heard him say he ordered the "boys" not to stone the cars, for fear they might hurt somebody; it was in March that he said he had labored with Elder Limbacker to get him not to shoot at the cars—were speaking

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of events in 1849. The Gazelle was run off a short time before I went to the Centre; in August, had conversation with Fitch about the Gazelle, in last of August or fore part of September, he said they had no pumps, and run into the marsh for water. Darius Clark employed me to go to the Centre, he first called on me about the 9th of August; my wages were to be $40 a month and no more; I had the ague when I first went there, for a month or so, I think it was occasioned partly by laying out at nights; have stationed myself in Fitch's and Filley's yard, and in corners of the fences at different places; my address towards Fitch was friendly; I told him I was tired of tending bar, it was too hard for me to be up so much at nights. I talked of the road as a monopoly riding over the rights of the citizens; did not exactly speak my real sentiments, I did not mean what I said. Spoke of personal injury I had sustained by having wood burned which they refused to pay for, this was true: during the two months I spoke against the road and spoke of my own injuries, I spoke sincerely; had sustained injuries by the loss of the wood at Nankin.

Fitch proposed that I should take the hotel. He used to invite me to go and eat peaches. He was not much absent from home—was carrying on farming—the conversation about hand bills was some time in the fore part of August, while I was at Jackson; it was at Filley's. One day when I was down there, he said he wrote to a friend in Chicago, and had 200 handbills placed in the hands of steamboat runners, and that 6 or 700 passengers had shunned the road and gone round the lake; said that and other annoyances, was the only way to make the road pay for cattle killed. Did not mention who had lost cattle. At another time heard him speaking of Barrett losing a cow—said he had advised B. to sue for her: he asked me to go to Leoni to attend the suit; said he advised B. to bring three suits, and fuss with the company in the law to divert the attention of spies. Dixon and Cochran were there then as spies—Sherman was not there then—did not see Fitch advising with Barrett at the suit. Barrett was sick at home, and appeared by counsel, Mr. Lemm. Barrett did not state to me why he withdrew the suit. There was no one by, as I remember, when I talked with Fitch about the suit. I was well acquainted with H. S. Spaulding who I rode home with. Fitch spoke of staying to attend a theatrical performance there that night by Mr. Hodge. He spoke of wanting to initiate me into the "Lodge" that night, and said there was to be "something up" that night. When I told him I did not like Spaulding, I did not tell him the truth—I have always been on good terms with S.

Heard Filley and Corwin mention breaking chairs at various times and places. Heard Barrett talk of injuring the road in September, between Filley's and Toll's store, and at the store—said he had given 'em hell, and would do so again if they did not pay him for his cow—said he would soon raze another engine. Barrett said Fitch would manage for him in case of difficulty. Fitch told me he would manage to get me or any one else clear. This was about the 11th of September.

In the conversation with Filley and Williams about the money when I changed the $5 bill for Filley and he paid W. $3, during the con-

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versation I overheard out doors, Filley said to W. "I thought the 'Gazelle' matter was setiled—Fitch paid you $10 and I paid you $12—how much more do you claim?" That was the day Sackrider came up from Leoni with a load. Fitch invited me into his house. It was on or about the 11th of September. He talked about his ability to get witnesses.

At the conversation on the 11th, he mentioned as those he could get for witnesses:

Harry B. Lathrop, Harry Halcomb, Alanson H. Delemater, John S. Hurd, grocer at Jackson, O. D. Williams, John Ladue, Cann boys, and the Price boys if necessary, and a host of others. There was no one present; also said if I or any one else appeared to swear against him he would shoot me down, and if he was prevented he had friends who would do it; did not qualify by saying if they swore false against him he would be 'tempted' to do so. Filley said to me at his house—speaking of being sued for stealing timber—that before 10 days were over, the Road would wish that a Fitch or a Filley had never been born. Filley often spoke of letters he had written to his friends warning them against coming over the road, as there was great danger from obstructions.

Had talk with O. D. Williams going over to Toll's store, and at the store; he said he was under obligations to me for my liberality in often treating him, as he had no money. I paid the money out of my own wages, which is $46 per month, and has been from the time I employed with them.

Have heard Fitch, Filley, Corwin, Williams, and Jack Freeland say they were banded together for depredations upon the road—for the destruction of the road. Filley made the remark and the others endorsed it. "Yes, we are banded together and will stick together."

By Seward—This was in Sept.; think in the fore part; said they would never give the road peace until they brought them to terms.

When the remark was made that they were banded together, Fitch said, "So *long* as we stick together all Hell can't convict us"—or words to that effect. They all made a similar response.

Fitch said it was the only course to be pursued to bring them to terms; they all said or assented to the same thing in substance. I also assented to the justness of the policy.

Have heard Barrett and Credit make similar remarks; said he wanted the company to expressly understand that he belonged to the Leoni band; and Credit said, "They can set me down for another."

On or about the 11th Sept. at his sitting room, had conversation with Fitch in which he said if they did not succeed in throwing off the trains during the State Fair, at the points named west of Jackson, Whitebridge, Dry Marsh and at the high embankment east of Franciscoville, they would burn the four depots, at Detroit, Ann Arbor, Jackson and Niles. Said he wanted to show the people of Michigan that the feeling against the road was not local. If they could succeed in killing from 100 to 150 persons during the Fair it would bring the company to terms; said if this did not do it, God d—n 'em we will burn them. And then proposed to give me or any body else $1,000 for burning these four Depots, or $250 for either of them; said he thought

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I would be a good person to do it, as I had frequent business over the road. He then spoke of the number of witnesses he could always get, and named those I have named; said if I or any one ever appeared against him, he would shoot me, and as he before stated, I was there some two hours, the balance of the time was spent talking of my taking Filley's house.

Am sure he spoke of killing from 100 to 150 persons during the State Fair.

Here the court took a recess of 20 minutes.

AFTERNOON SESSION.

Wescott cross examined by Frink—Was there from the 29th of August to the Sunday before the State Fair, before the contents of the letter to Goodwin were known. Gleason came down on Sunday. Filley spoke to me about it the next day. He asked me if it was true. He told me that Gleason showed him the letter, and said I was a d—d Railroad spy, and ought to have my throat cut. I carried the letter from Brooks to Goodwin. The letter was to ask him to release me from my situation. The object of this was to get me to ferret out these depredators, &c. Don't recollect the date of the letter. It was written before I went into the employ of the company. Goodwin read the letter in my presence. I was in the carpenter shop of the Prison. The letter was not read to me by Brooks. Mr. Goodwin did not show me the contents. He said he would cheerfully grant the proposition. I talked with Fitch about it on the Sunday the boys came from Leoni. I commenced the conversation. He told me that he was fully convinced that he had seen the letter. My object was to get him to come here and have him convinced that I was not a spy, so as to regain their confidence. The time Dixon, Filley and myself were playing euchre, and Gleason came in, was before Gleason came up with the letter. Have not been to Fitch's house since the arrests. I was at Filley's the time a few arrests were made after the first arrest. I have been to the jail since the arrest by request of Mr. Welch and Dr. Moulton. I was at the jail after the indictments were made. Asked the Sheriff to bring Welch out and he did so. Did not ask Welch to become a witness or to testify. Told him that if he would make a statement, I would hand it to Mr. Clark, and they could do what they pleased. Did not presume to say that he should be released. He did make some statements, and I told him I would report them to Mr. Clark. Had some conversation with John Ladue coming down on the cars. I asked him to come out and tell what he knew. Did not ask him to give evidence. Told him he was a young man, and I was sorry he had got into such a scrape.

Cross examined by Seward—Know John Priest and Madison Wightman, of Nankin or Dearborn. Did not tell Priest that Madison Wightman had received $100 to look up witnesses to sustain my character. Never had any conversation with John Priest on any such subject:—conversed with him, but in the presence of others, at the Probate office here. Know Joseph Pardee, of Dearborn. He married a cousin of my father's. Have never told him that if these persons were convicted I should receive $1,000. Never told him I should

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receive $10,000, nor any other sum. Never told him I should receive a cent. I was under the floor at Filley's the fore part of December last. Think it was about the middle of the week: it was at night between 7 and 8 o'clock:—I crawled partially under so that I could hear the conversation. Did not enter the whole length that evening. There was a hole that was cut through the foundation on the south side of the house. There was no cellar in that part. The aperture was 2 feet high by 20 inches. The hole extends from the ground to the sill.—Corwin, Price, Filley and Credit were in the bar-room over me. Sometimes they were in one part of the room and sometimes in another, but generally between where I was and the fireplace.

I heard my name mentioned. Wm. Corwin said he had come a good drive over Wescott in the libel suit. He said they had all made d—d fools of themselves by letting me slip through their fingers. Eb. Price said I ought to have my d—d throat cut. Filley said he would like to have a shot at me, would like to have somebody throw me up and he would stand off 20 yards and shoot at me. He then said never mind boys, if he does come out against us we'll swear him down.—One of the parties present then alluded to the stigma they would get against me by the slander suit at Jackson; it would place me in such a situation that the people would be against me; that people would be prejudiced by having such a man as Bill Corwin to prosecute me for slander. Filley was the next man I heard speak; he asked Eb. about shoeing his horses. Eb. said he could do it any time. I have backed under that floor my whole length. There was a hole through the floor that had been cut through for a penstock. I don't know that any other persons were in the room. Mr. Ferguson told me that Fitch had come in; think Fitch came in Tuesday, 11th; and remained till the next Monday. When Fitch left, I went to Ypsilanti on the same train to watch his movements. Did not know Washington Gay then; he was pointed out to me afterwards. I was introduced to Joe Dows early in December. Know him—don't know what occupation he followed. Report says he is now in Pittsburgh. Don't know that I ever conversed with him but once. Fitch said he would give me or any man $1,000 to burn the four Depots, or $250 to burn either. At the time I waited for the cars at the Centre, I asked Fitch if it was not near car time, and he said it was. I remarked that I thought the cars would be late, and he replied, "Yes; they will not come till the sun gets over this way." Never heard any person except Fitch speak of throwing the cars over the high embankment at Francisco's. Have heard Filley, Corwin, Jack Freeland, and Woliver speak of getting the cars off at the dry marsh. I think that Filley first spoke and said it would bury the whole locomotive; that they could bury the whole train; that they would not need coffins or sextons. Woliver said it would be a good plan, &c.

The bonus of $100,000 to be asked of the company to let them alone was to be paid to the boys; it was to be obtained by a proposition through their counsel, Mr. Joy, of Jackson. I think it was to be a written one.

Have been three times under Filley's house. Once I did not hear anything interesting, and left.

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When I followed Fitch and Dows to Gay's house, it was in the evening. I think this was on Friday. I was alone when I followed them.

By Frink—I asked leave of absence of Mr. Price, for the purpose of watching Fitch, for I believed that he came here for no good purpose. I had heard that he had threatened my life, and supposed he came here for the purpose of procuring some one to take my life. I have told that I heard my life had been put up at auction, and bid off for $100.

Have you not, since the time you state you were under the floor, circulated a report that your life was put up at auction at a secret meeting, at which you were present?

Objected to by Mr. Van Arman.

The Court sustained the objection.

Mr. Seward asked the Court to note exception.

Never caused such a story to be published in the Daily Tribune.—I never saw it till I read it in that paper. Have made four affidavits as to what I have sworn to. Made the first one in September, while I was living at Marshall; the affidavit was drawn up in Crary & Pratt's office. Made the second the same month, at the same place; made the third at Marshall, and at the same place, in October; and I made the fourth in Niles, in March. Mr. Clark had charge of them; I have read them several times. Have not read them for a month. Mr. Van Arman read a portion, but not all of the affidavits, on the night or day before I came on to the stand. Never had any copies of them.

When I followed Fitch and Dows to Gay's, I went to the corner opposite his house. The night was not so dark but that I could recognize the persons I followed.

By Mr. Van Arman—The indictment against me at Mackinac was obtained on the affidavit of Jarus Rankin, before the grand jury. A *nolle prosequi* was entered, because Rankin was indicted by the same grand jury for perjury in making that affidavit. Wm. Gray was the prosecuting attorney. I went there for trial three seasons, but he never appeared as a witness against me. I have been told that Rankin committed suicide.

I did not mean to say that Barritt was at the law suit in my direct examination. He appeared by counsel.

Question—Is it difficult to distinguish each particular time or place at which you heard the conversations testified to?

Objected to by Mr. Seward.

The Court sustained the objection.

The affidavits I have spoken of were made at times, along, as I learned facts, and events transpired. Have made none since the arrests.

When Fitch spoke of burning the four Depots he also spoke of a general destruction by fire unless the Co. came to terms.

FIFTEENTH DAY.—MORNING SESSION.

THURSDAY, June 19th.

Geo. Knickerbocker, sworn.—By Van Arman.—Lived at Albion for the last 14 months; had formerly lived at Jackson. I know Wm.

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Warner, Fitch, Lemn, and Dr. Farnham, defendants; have known F. three years.

Some time in the year 1849, soon after a circular was published in the papers by Mr. Brooks, I had conversation with Fitch about depredations on the road, on the steps of the American Hotel at Jackson or on the cars the same day, can't tell certain which place. He stated that he considered it perfectly right the course they were taking, the people had their cattle killed and could not obtain redress any other way. I told him they could get their right by suits at law—he said they could not—that every man had his price and the judges of the court could be bought as well as any others. I told him I thought the case could be appealed to the Supreme Court, where they would render justice. He said he had no more confidence in the Supreme Court than in the officers and judges of the lower courts; that they knew enough law, but could be bought as well as others, though in ordinary cases they were well enough; predicated his opinions on a county judge, whom he named; he said the influence and money of the company would prevent justice being obtained in any court; called the company an aristocracy. I suggested to him that if by killing innocent people and destroying property, they expected to obtain their object, they would be mistaken. He replied that persons who would support such a company ought to be injured. He spoke of the circular of Brooks, and I told him it was a fair proposition, and he thought it a perfect humbug: said he thought as the company had so much money and influence, justice could not be obtained; that the depredations were justifiable, as there were no other means of obtaining justice.

I remember another conversation with him, but do not remember distinctly what was said. Never heard him say anything of a different character about the road, from the foregoing. He said the proposition in Brooks' circular was a humbug.

(The proposition of the circular referred to, was to go into a legal investigation of the difficulties, Brooks offering to pay half the expense, on the part of those aggrieved.)

Amos B. Taylor recalled.—Was shown a paper—have seen this paper before, found it in the culvert, near where the Gazelle was thrown off—found it a day or two after she was thrown off.

Alonzo Holmes sworn.—Seward objected to the examination of this witness as he was originally indicted with the other defendants.

Van Dyke in opposition to the objection—Although originally one of the defendants, against whom the indictment was found, the witness was released on his own recognizance and is not now on trial and cited McNally on Evidence.

The court referred to the rule, and overruled the objection.

I am acquainted with Wm. Champlin and have seen him write, (examined the paper found by Taylor,) should think this was his hand writing; have seen him write and have other of his writing in my possession.

Cross-ex. by Fink.—Recognize the hand writing by general features and some peculiar forms of letters by him in commencing letters; have seen him write; he used to write at my house last winter at my house, while he was attending writing school. (Here the witness exhibited

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another piece of writing, a copy of "Silver Moon," by Champlin, from his pocket, corresponding with the one in question.) Have no doubt of this being his hand writing. Van Arman here read the paper referred to as follows:

(*Verbatim Version.*)

"THE PRICE BOYS' WARNING."

MICHIGAN CENTRE, August 19, 1851.

Mr. Price Sir i want you to be at the mild stake this side of Leoni on Monday night at about half past 9 o'clock we intend to run the cars off the track somewhars about thare be sure and be thare at the time

By order of the Committee

W. CHAMPLIN.

Witness—I live at Michigan Centre; have lived there over 2 years; know most of these defendants; don't know B. F. Burnett and Mills Barbour; have seen Fitch, Filley, Corwin, Price boys, Champlins, Freeland and others, frequently together at the Centre, generally at Filley's tavern; have heard a number of them speak of the railroad matters; they accused me of being a Railroad spy; Fitch said he didn't think I was; he had thought so at first, but had changed his mind.

Have had talk with a number about it; heard considerable about spies by various ones; I live 30 rods north of the track; last fall, heard the cars were stoned, but was not out, and did not see it. Had a difficulty with O. D. Williams on the 6th or 7th of August; he threw a bottle at me; we never had had any difficulty before; he came along and said to me, "they say you are a Railroad spy;" I told him I was not; they had accused me of it last summer, but had made up their minds it was not so. A few minutes after I went to Filley's, and sat on the steps; was talking with Woliver when Williams came along and pulled me off twice, and remarked, "they do say you are a Railroad spy;" I answered, "It's nobody's business if I am."

He then asked Corwin into the bar to drink—took a bottle in his hand and said to me "you are a d——d pusillanimous;" I replied to him, "you are ditto;" and I instantly received a blow on my head which knocked me senseless for some time, and paralyzed one side of my head so that I have lost the use of one ear and one side of my tongue —it broke my jaw, and I was disabled for some time from the blow. I think Filley, E. and L. Champlin, and Kirkendall were present.—Williams did not alledge any thing else against me; don't know how I got home; my health was poor at the time; I had previously been sick and was unable to defend myself from attacks. I knew Wescott was about there; afterwards saw him with Fitch talking; have seen Dixon and Woliver here.

Cross ex. by Frink.—Saw Williams have the bottle in his hand, but did not see him when he struck me; Fitch said once he had no objections to any one swearing against him if they would not swear to anything but the truth; am shoemaker by trade, have done considerable business, have worked some for Fitch and Filley; not at my trade.

Abram Henry sworn—Live in Jackson township, about 7 miles from Mich. Centre; in 1849 I lived 1½ miles north of the Centre, am farmer; I know W. Corwin some 12 years; have lived in Ingham 3 years

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of that time; I remember when guns were fired at the cars in 1849; I heard the cars pass, and heard the guns in the direction of the cars; there were 4 or 6 reports; think it was in the last of May or 1st of June 1849, 9 or 10 P. M.; I saw Corwin next A. M. and talked about the firing of the guns; asked him if they were firing at the train last night, and he said "yes I suppose so;" I asked him if any body was killed, and he answered "no;" I said bye and bye they will kill somebody; he replied d—n 'em if they don't want to be shot let 'em pay for the cattle they have killed; I told him that was a bad idea, and they would kill innocent people who paid their money for riding over the road; he said "d—n 'em they need not ride over the road if they don't want to be killed."

Have heard O. D. Williams speak of having his cow killed, and said they offered to pay him half price, but he would not take less than $25, and if they did not pay that price it would be a dear cow to them, but said he should not place anything on the track.

Heard a noise one night and thought the cars had run off. Saw Corwin a day or two after; he said they damaged the cars about $500, and after they had a few more such jam ups "d—n 'em they would be willing to pay for the cattle they killed."

Jack Freeland told me he had some sheep killed and they offered him half price for them, but if they did not pay him full price they would be dear sheep. Said the cars were getting rather skittish about running through Leoni, and d—n 'em they'd better pay up for cattle if they did not want trouble.

Heard O. D. Williams speak of switch being turned, but said they could not lay it to him, as he was abed; he spoke of somebody going cross lots for cattle; said his wife looked out of the window and saw a light. Speaking of their running off at Leoni, said they would be willing to pay for his property bye and bye.

Cross examined by Frink—I came to Detroit day before yesterday. Was subpœned on Monday by Phin. Farrand; had before told Spaulding what I knew; have made no affidavit of the matter, but made a statement of it—the statement was written out by Mr. Wood, day or two ago.

The conversation with Freeland was coming home from harvest in 1849. Don't remember how the conversation began. He said they had not paid him for his sheep.

The talk with Williams was right south of Wm. Jackson's store, near W's house in Leoni. Think I had another talk with him near the same place.

Did not say to Williams in presence of Kirkendall and Hodges at Geo. Hatton's grocery, in Leoni, that if it was my cow it would be a dear cow to them.

Had a talk with a man; don't know it was Rev. Mr. Billings; did not say to him if the Railroad Co. knew what I knew they would not call me for a witness; did not say so to my recollection; don't know Mr. Billings.

Samuel Sackrider sworn—Live at Grass Lake; farmer, and have worked on the railroad some; know W. Corwin and A. Filley; remember one day last fall when I went to Filley's with a load of men

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from Leoni, found some 8 or 10 at Filley's; took dinner there; had duck pot-pie for dinner; saw Wescott there; did not know Wells; was some drinking going on; saw Filley hand Williams a bill which he told him was a $3 bill; just before that I saw them out doors talking; at the same time I saw Wescott standing very still around the corner, about 6 feet from them: I called Filley in for something to drink; said he would be in soon, Wescott came in and set down; about 5 minutes after I called Filley again, and he and Williams came in; Filley asked me to change a $5 bill; I told him I was "dead broke;" he then asked Wescott, and he changed the bill for him, and Filley handed Williams $3, and asked him if that would make it straight; at one time I was talking with Lester Penfield about the road; P. said the track ought to be tore up and the cars thrown off; I replied that a man possessed of that disposition ought to be hung, for he might kill some of his best friends; he said they had no business to travel over the road.

Cross examination by Frink—Saw Dr. Moulton at Filley's the day referred to. Saw Fitch there a short time; saw Wm. Jackson of Leoni, there in front of the bar room, in the street; he did not stay; don't know where we went to; was some drinking, Crowell, Myers, Kirkendall and myself, of our company, joined in the drinking. Saw Wescott about there. Remember Filley handing Williams the $3 bill distinctly. Have talked about the matter with Wescott since; he asked me if I remembered the circumstances; did not know Joshua Wells at that time, have seen him since. I heard none of the conversation out doors between Filley and Williams, before they came in; don't know whether Williams was there when I got there, or came after I got there. Have made an affidavit of this matter since this trial commenced, it was read to me about a week ago. I have been out of the city and came back Tuesday.

Direct examination—At Filley's that Sunday, considerable liquor was drank, which went on "common account." Some paid, I was dead broke and did not pay. Williams said all hands come up and drink, "it 's common stock." I got into the wagon to go home and they took me out and carried me to the bar to pawn me for liquor, we had a pretty general time of it; a rather "billious time" of it as I thought.

Here the court took a recess of 30 minutes.

AFTERNOON SESSION.

L. B. Stanton sworn—examined by Van Arman—Live at Jackson; knew Fitch and Filley, remember the burning of a culvert in '49, a few rods east of Filley's; I had been south, and was passing there and stopped at Filley's; Mrs. Filley came into the bed-room, and said to Fitch, who was in the room with me, that the railroad culvert is on fire, and you had better go and put it out; I said to F., let's go and see it; think he did not go quite up to it, but I did, and saw a pile of timber in the culvert on fire; the culvert was 4 or 5 feet deep; the timber had been thrown in there; I said to Fitch we had better get some pails and help and put it out, as the cars may be along and be injured, and also that it might set buildings on fire; Fitch said you will have to go out of this town to get help to put it out; his manner was always very

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pleasant to me, and was on that occasion: I went to Jackson and told Spaulding the culvert was on fire and better be attended to.

I heard of the depot being burned in this city last fall; soon after that I saw Filley at Mundy's grocery in Jackson, and speaking about it, he said I have given them credit for $2, and made some other remark that he should get his pay of them in the end or something to that effect.

Cross examination waived.

John H. Dexter sworn; examined by Van Arman—Resided in Jackson for one year; came from Ohio; lived at Michigan Centre about three months, from about 10th July, 1850; know most of the defendants; don't know Penfield, Laycock, B. F. Burnett, W. Hill, H. Showers, J. Ackerson, J. Ladue and Mills Barber.

While there was employed building ball alley. At different times saw most of these defendants at the Centre; the Prices and Corwins were there most generally in the evening. Saw Fitch there with them.

Have heard Barrett, Fitch, Filley, Corwin, Prices and Moulton, speak of cars being run off, and wished it had broken them worse, or words to that effect.

At their meetings, when I came in they appeared to change their topic of conversation. Heard Williams say the road ought to be torn up until they would pay full price for cattle killed, and then they would go along peaceably; said the railroad spies must keep out of his way, or they might get laid out if they came round where he was.

Remember one Sunday, while Wescott was about there, that Gleason came down from Jackson; my father was there that day. Heard Filley and Fitch say in the evening, after G. left, that G. had seen a letter from the company trying to hire Wescott for a railroad spy.

J. Tyrrell told me that folks about there accused me and my father of being railroad spies, and we had better settle up and clear out as they might get a lick at us. I told him I thought not. He said that I did not know them as well as he did. Before G. came down, used to see Wescott intimate with Fitch and the others, but after that heard them call him a spy and appear cool towards him.

Heard Corwin, Fitch and Filley speak of obstructions on the track west of Fitch's; they said it was a pity the engine did not run off and smash the whole train.

One of them, I forget which, said the stick was pointed, and placed so as to break the lamp. Filley had a suit with the company about the middle of August. The night previous to the suit, the cars were stoned. I had just gone to bed and heard the glass jingle; went down and told Filley somebody had thrown glass into the parlor window; he said he guessed not; went and looked but found no glass broken; it was while the cars were passing; found Fitch, Filley and two or three others out of doors. The Price boys were about before I went to bed. I afterwards saw glass on the railroad track, six or eight rods from where they stood; afterwards saw two piles of stones in Filley's orchard, about the right size to throw.

I remember a pile of lumber being burnt up there one night about 11 o'clock; heard somebody come into the house without boots or

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or shoes on, and soon after that saw the fire; I called Filley and told him of the fire, and we started towards it; he said it was nothing but a board kiln, and we had better go back or the spies would see us and lay it to us, he went back and I went on; told him I was not afraid of the spies; went up to the fire and found N. Credit there. Filley slept in the N. E. corner of the house; the man came in without boots or shoes on, and passed through the dining room; to go to Filley's room you would have to pass through the dining room. A short time before, I heard Fitch, Filley, Corwin, Prices and others speak of Holmes being a spy; heard Corwin tell the way H. was struck with the bottle; said Williams held up the bottle, and he struck it out of his hand, and it struck Holmes. I heard W. call H. a spy just before the blow; I was present when H. was struck, but did not see the blow; the bottle passed clear by my head, and went very swift; it could not well have been thrown swifter.

I was looking the other way at the time, talking with some one.—Holmes fell senseless, and I picked him up, and with help, carried him home.

Cross examined by Frink—I boarded at Filley's while I was there; I used to retire from 9 to 11 o'clock, saw most of the defendants there frequently; heard Williams speak of the spies a short time before he struck Holmes; he gave no reason why he wanted the spies to keep out of his way. Fitch said he wanted the cars run off because they would not pay for the cattle killed; saw Wescott about there nearly every day, generally about Fitch's and Filley's, and at the alley.—Gleason came about noon; first saw him at Fitch's. The night I heard glass jingle and went down and found Filley some twenty feet from the railroad track, think Fitch and several others were about there; next day saw glass on the track opposite Filley's house, a little east of Fitch's; never made an affidavit of this matter before.

Elizabeth Hargrave sworn; examined by Van Arman—Reside 1½ miles from Jackson, east from the village; lived there last spring; I know Minor T. Laycock; my maiden name was Culver; am sister of Barney Culver; Mr. Laycock worked for him last spring; I heard a conversation between my brother and Laycock, while he was there; heard Laycock say at my brother's, when Mr. Knapp was there, that all the railroad men knew, as he had worked on the track, and he said they suspected him of putting obstructions on the track, and said he did not blame them for it, as they could not get full price for cattle killed

This was said in answer to my brother's telling him they were doing very wrong; he seemed to be so bold and impudent that I, myself, asked him if the company had killed any cattle for him, or injured him, and he said not, but he had sold off his property at reduced prices, expecting to go into employ of road, but they would not employ him.

My brother asked him if he was not afraid that the law would be against him and his party, and he said no; that he and two other fellows went and took some pistols out of Fitch's window to shoot at the cars, and Fitch told them to shoot, and wanted to know what the law could make out of that, as they didn't shoot.

Cross examination by Frink—Laycock said the R. R. would not keep him in its employ, because he would not turn against the people at

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the Centre; don't know whether he used Fitch's name, but understood him to refer to a company of men at the Centre, who opposed the road —his associates were of that class of people.

Amos Van Bailen, sworn—Know Dr. Farnham by sight; have seen him at Marshall, saw him near the railroad track between Marshall and Olcott's Mills, two miles out, about a year ago; I was walking out on Sunday; he had a bar of iron in his hand, and appeared to be stopping on the side of the track.

A Mr. Knox was walking with me; we went along to where he was and found the wedges out so as to loosen the rails, which would be apt to let the engine run off. When the Doctor saw us he went from us towards the village.

Cross examined by Frink—We were seven or eight rods from the Doctor when we saw him driving the wedges out from the sides of the rails. He discontinued his rappings after he saw me and Mr. Knox. I think it was about one year ago: don't know that the Doctor was at Marshall to cure any prevalent disease there, or to pull teeth. I did not recognize him as the Doctor at that time, and asked Knox who it was, and he told me it was the Dr. I saw him the next day at Burgess' tavern or "hole," and recognized him as the same person I saw on the track; have seen him frequently, and he is now one of the defendants.

By a Juror—Did not see what he did with the bar? I thought at the time he had displaced the wedges.

Geo. Knox sworn; By Van Arman—Lived at Marshall for three years; known Dr. Farnham for over a year; saw him on the railroad track near Marshall about a year ago, Amos Van Bailen was with me; it was on Sunday; the Dr. was going east on the track, and had a bar of iron in his hand; went up to where we saw him, and found several wedges knocked out of the side of the T rails, think they had lately been knocked out; we examined them, and found bruises on them.

Cross examined by Seward—He did not have a cane, but a piece of old railroad iron; when we came up to where we saw him on the track, we saw wedges knocked out, and they looked as though they had just been loosened, one end of the wedges would be bruised in driving them in, and the other in driving them out. He was going east; did not see wedges out except where I saw him; we were coming up to the track from the south, some five or six rods off. I had not known the Dr. a great while before that, have frequently seen him walk with a cane.

Direct examination—The big end of a wedge would be battered in driving them in, and the small end in driving them out; the small end of those we found out, were freshly bruised.

Geo. Gardner sworn, by Van Arman—Have lived at Jackson 14 years; saw Fitch at my grocery in 1850, and there I heard him mention railroad difficulties. He said the road was d——d poorly managed; he thought a boy 10 years old would manage it better; thought Col. Berrien would be better, as he (Berrien) he said thought the company ought to pay for cattle killed; said the road carried produce from Niles as cheap as it did from Jackson, and that the road had fixed the

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price of men at $500, referring to a man killed at Galesburgh; said they had paid his wife that sum. I said to the Captain (Fitch) they say you have been stoning the cars up there; and he replied he never stoned them, but presumed the d—d spies had done it. Some one said they were thrown from his peach orchard, and he said he would like to catch them (the spies) there. Speaking of the stoning, he said it was mild means they were then using; that the Co. was nearly used up now, and had gone down with only 15 passengers on one train; he said some other things and made some harsh remarks which I cannot now remember.

Reuben Town sworn—Live in Detroit; was on the cars with my family on the 12th August, 1850; the cars were stoned twice just past the large white house on the right-hand side going out of Michigan Centre; don't know who occupied it. I went into the next car and found Mr. Root or Rice, of Jackson, who gave me a stone which he said fell near his head. I kept the stone, which is now here. (Here the witness exhibited a good sized cobble stone.)

Isaac S. Smith sworn—I know Tyrrell; have formerly lived in Woodstock, Lenawee county; was with him once west of Jackson when he placed a short piece of the old flat bar on the T rail cross-ways; Mr. Marsh and Earl were along; we started to go down towards the white bridge where the train had stopped; we turned to go back after the train started on; Tyrrell was a little behind, and as I looked around I saw him put it on the track.

Live at Michigan Centre; my father kept the "Centre Exchange." Know several of these defendants; saw them there occasionally. Heard a good deal said about railroad matters, but can't remember exactly what it was or who said it.

Cross examined—As I passed along saw pieces of iron lying about the track, and knew where Tyrrell got the piece he had.

Amasa W. Marsh sworn—Live in Columbia, Jackson county; knew Jacob Tyrrell; was at Michigan Centre about one year ago on a visit; was at the Centre Exchange, kept by one Smith; saw the passenger train stop some three-fourths of a mile west, and went up to see what the trouble was; it looked as though they had run over some iron placed on the track; young Smith and Earl were with me, and I saw Tyrrell there; there was also another man along whom I did not know: after we walked a ways going back, Smith spoke and said there was something on the track; looked back and saw a piece of iron one or two feet long laying on the track; Tyrrell and the other man I did not know were behind, very near the iron bar I saw across the track. We had just passed over the track where the iron lay, but it was not there then.

No cross examination.

Here the court adjourned to the 20th, at 9 A. M.

SIXTEENTH DAY.

THURSDAY, June 20.

Horace Caswell sworn—Live in Marshall now; lived in Detroit the past winter; am a carpenter and joiner; was in Michigan Centre in '49; left there September, 1850: while there worked for E.

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J. Price; worked also for Fitch harvesting in '49 and '50; know most of the defendants; not intimately acquainted with Freeland, but knew him by sight; in January, '49, heard him speak of a project of blowing up a railroad; the talk was in presence of Fitch, in front of Filley's house, in forenoon; said he thought of a good plan to blow the cars off the track by placing a keg of powder under the ties, with a train leading from that to the joint of the T rail, and raising the T rail and putting percussion caps under it; said that when they came over the caps would explode and communicate fire to the powder train, which would blow them to hell, where they ought to go; he was speaking to Fitch, who said, that's a d——d good plan, that's right, Jack, I like to have you true to us; Freeland said, never you mind, Mr. Fitch, I shall stick by you as long as one of us is left. In answer to something that Fitch said, Jack replied never mind, you will have it before long; previous to '49 when I worked for Fitch heard him speak against the road.

In August, '49, received a pistol from Fitch, with two other persons, Minor Laycock and J. W. Wells. Was out on the road and came into the shed, when Fitch handed me a small rifle pistol, which Minor said belonged to Moulton.

When Fitch handed us the pistols he told us to go to a point of brush east of the Centre, near the marsh, and shoot at the engineer; this was said in the shed, as we were going out of the door; asked Fitch if they were loaded, and he said they were all loaded with balls; we got there too late for the cars, then went back to the house and laid them upon the shelf; talked with him about it next forenoon, and he said, "never mind, boys, you can use them any other time you want, they are ready any time;" lived with Filley in May, '49; one night Wells, Laycock and me were setting on a hand car with Miller, about nine o'clock, when we left it I went to Filley's to bed, and Laycock and Wells I supposed went to Fitch's; the car was whole when we left it; the next forenoon the hand car was broke; Filley asked me who the breaking of the car was laid to; I told him I did not know; he replied, "never mind, the one who broke it probably lives nearest to it." Previous to that Filley had wanted to borrow the hand car of Miller to go to Leoni, and he would not let him have it, and Filley said it would be broke every night that it remained there; Miller had charge of the car laying T. rail.

Remember the law suit at Jackson; heard it talked of; and Fitch said he could clear any one arrested for depredations on the road; could get lots of witnesses to do it. I did not know Sherman, but heard him mentioned several times when I was back there; after I left in September, heard Filley, Fitch, Price boys, Bennett, and N. Credit speak of him: think it was in November.

Fitch said there is one of the d——d railroad spies; just such men as they get to watch the road and burn the company's wood. This was in Filley's bar-room. Fitch said, boys I should think you would remember Sherman in your prayers, if you don't go to bed till late. I should, if he had been in company with me and had turned traitor

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if he had turned traitor to me, I should like to finger my knife around his ribs; don't remember what reply was made by the others.

At another time, think it was in the fall of '50, opposite Filley's house, and Fitch, Filley and myself, three Champlins, two Credits, Barrett, Williams and Corwin, were sitting on the fence near the road, watching for spies, when the cars came along, to see who got off; it was in the evening. Some one got off and went south. Fitch said I am going to see who that is, and followed him down south and picked up a stone. He soon came back and said he discovered it to be Wescott; and it was a d——d good thing I found it out, or he would have got that stone side of his head. I was intimate with Laycock. Filley said it was a d——d good thing it is him, or he would be a corpse before morning.

Cross examined by Frink.—I am 24 years old: before I went to Michigan Centre, I lived in Otisco, Ionia county; lived there about 16 years. I started to go to the State of New-York to see the folks; had no other motive in leaving; never was indicted in Ionia to my knowledge; did not leave there to evade prosecution. Went to Michigan Centre in May, '49; started from home in April, think it was the 28th; when I got to the Centre I got out of funds, and stopped to work to get some; hired out to A. Filley at $12 per month to work on farm, &c. Hired for no particular time, and stayed two weeks, then went to work for Joshua Wells, south of the Centre; worked for him two weeks; Joshua was then working for Fitch; think I left Well's about the 1st of June; then went to work for Barrett at wagon work; stayed a month and a half; from there went all round the Centre working for different ones, harvesting. At first should not wonder if I went to cutting grubs for a darky; did not cut grubs, was fooling then; worked a few days for Fitch.

In August I worked three and a half days for Burch, at Grass Lake, and went back to the Centre and boarded at the tavern three weeks; had a lame arm and could not work, left Burch on that account; think I had worked a few days, cradling, for Fitch, in August; when my arm got well, went to feed a thrashing machine at Wells, for a day and a half; went back to the tavern again and stayed a week or two; then went to work for Price and stayed 4 months. The time I saw the hand car on the track, Josh. Wells and Laycock were with me; it was in the night; when I left, went to Filley's and went to bed; supposed Wells and Laycock had gone to Fitch's to go to bed. Never broke a car. Know Hart and Alonzo Holmes; did not tell them the next day that I broke the hand car the night previous; don't think I told James Mitchell, or Miner Laycock, or any one else that I had broken it. Again worked for Fitch eight days in harvesting, in '50; think a man named Blackburn and an Englishman worked there at the same time; Corwin worked there also; first had talk with Fitch in fall of '49, about the Railroad; can't remember what was said or who was present; think the pistol talk was the second one I had with him.

When he handed me the pistols, I was going in to go to bed; no one went with me; think I had been over to Holmes' or Filley's:

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when I left Fitch's to go out, Wells and Laycock were in the house; the next I saw of them was when I met them under the wood-shed, and Fitch gave me the rifle pistol; did not see W. or L. after I left Fitch's house until I got back; had no previous talk with them about the pistols; they both had pistols in their hands when I met them in the wood-shed; Fitch was with them; they came out of the well room or wash room; don't know who spoke first; think Fitch said are you not going up with the boys; I asked him where, and he told me to go to a certain point of bushes near the marsh, and shoot the engineer; to shoot through the engineer's house, and if we did not hit him, to give 'em hell anyway—meaning, as I supposed, the passenger cars; the passenger train was expected; we were absent perhaps half an hour, and returned; carried the pistols up stairs and laid them on the stand; had a talk with Fitch about it the next morning, in presence of Wells and Laycock, and think Fitch's wife; when F. asked if we shot, told him no—got there too late; he said never mind, they are ready any time, and you can use them; think the pistols were removed before the next night; when Fitch spoke of Sherman as a spy, it was at Filley's; he said if he was in the boy's places, and Sherman had turned traitor to him as he had to them, he would like to finger his knife about his ribs; think Filley replied in a similar tone.

When I left the Centre in Sept. last, I went to work for the Railroad Company. Mr. Hurd employed me in the freight house, shipping wheat; don't remember who recommended me; Spaulding first spoke to me to go to work; I made an affidavit of this matter last winter, the only one I have made; it was 2 or 3 months after I commenced work; I went there to work before Joshua Wells did; have not seen my affidavit or a copy of it, nor has it been read to me since I made it. I don't know that I was charged with arson before leaving Ionia; don't know that a building was burnt there before leaving. Were you arrested and examined on a charge of arson, before you left Ionia? That has nothing to do with this case, it's a matter of my own; I don't know that I was charged with maliciously killing a horse before I left.

Hiram C. Dexter sworn— by Van Arman—Live at Jackson; worked at Michigan Centre in summer of 1850 for A. Filley, building a ball alley; was about there between two and three months; was sick a part of the time; knew Filley, Fitch, Corwin, Prices, Williams, and others; boarded at Filley's; often saw the defendants there nights: Tyrell told me I was suspected of being a Railroad spy, and I had better be careful and not offend any of them, as they might knock me over, or injure me; heard them accuse Dixon, a wheat buyer, of being a spy. I was at Filley's the night the cars were stoned. I was standing near and heard a stone hit the cars; Price, Corwin, Fitch and Filley were there; saw Filley have a bottle in his hand, and swinging it as the cars passed, at the time the glass windows in the cars jingled from stones thrown. It was a passenger train going west.

Saw two piles of cobble stone in Filley's garden near the house,

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don't know what they were there for; think they were recently placed there; partly covered with leaves; have seen Caswell and Westcott about there; I left about the 2d of October. Was there the night some lumber was burned: was very unwell; my son and his wife were taking care of me; my son had been over to Dr. Moulton's after medicine; came in and said he thought Shoemaker's warehouse was on fire; went out and came back, and said it was the lumber on fire.—Some half an hour after that I heard a man come in below apparently without boots or shoes on, and pass in through the room towards Filley's bed room.

Cross Ex. by Frink. Filley at times had several men working for him; I sometimes tended bar and did chores when I was unable to work, and he or his men were absent.

James A. Dyer sworn. Reside at Jackson; (Postmaster) during the State Fair last Fall, as I was passing from my office to my house, I overheard two persons talking, at the corner of the fence between Porter's and Huff's near the side-walk, my attention was attracted by hearing the railroad mentioned; don't know who the persons talking were. What was the conversation? Objected to by Seward, as not being the conversation of any of defendants.

Van Arman said he was frank to state that he could not prove the persons were any of the defendants, but I am prepared to prove that the plan of throwing off the cars, and killing 100 or 150 persons, was there talked over by these two, the same as it had been to Westcott, by some of the defendants. Some circumstances went to show that it was by some of these defendants.

Seward persists in his objection.

Witness. The night was dark, I could not distinguish who the persons were; they spoke in a loud whisper; they went down the alley—north, when they saw me.

Next morning I telegraphed to Detroit; last fall I was on the cars near Leoni when they were stoned, one hit my hat, it was about 10 o'clock at night.

Cross ex. waived.

Samuel Chadwick sworn—Live at Jackson, know Fitch, heard him speaking of the road once in front of Geo. Gardner's grocery at Jackson, it was the next day after the cars had been stoned; Fitch came up and some one said, "one of your particular friends were on the road last night, Mr. Rice," he replied my friends have been warned enough not to ride over the road, and if they will ride they must suffer the consequences. Heard him say the road was a d—d monopoly, and they had better pay for the cattle they killed and some other threats which I don't distinctly remember.

Cross Ex.—This is the only time I heard Fitch make hard threats against the road.

Roswell W. Chamberlain sworn.—Live three miles north of Jackson: know Mr. Lemn, he was once at my house, about last February or March, and spoke of the railroad matters, and of a suit pending against Corwin, said if C. was convicted and sent to prison he should be sorry for, or pity the R. R. Co., said they had a good deal

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of difficulty at Leoni, and Corwin had a good many friends there, and obstructions would be placed on the road to throw the cars off, and mentioned a marsh where a train could be run off and run out of sight: he said in case of Corwin's conviction he thought the train would be run off there; did not say where the marsh was.

Spoke of injuries done by the road, and that the people would have revenge; said it was right and there was no other way for them to get revenge; (referring to the depredations;) specified how they would do it, by throwing the cars off in the marsh.

Frink and Seward objected to giving these words, spoken after the commission of the act in November last, charged in the indictment; and also that Mr. Lemn was acting as counsel for Corwin.

Van Arman said he had other testimony of this same class, which he should offer by-and-by, and as a discussion was likely to arise on the subject of its admissibility, he would withdraw it for the present, and bring the whole subject up for discussion, when other testimony of the same class would be sought to be introduced.

Here the court took a recess for one hour.

AFTERNOON SESSION.

Samuel Chadwick recalled—Know Ammi Filley; heard him say that whenever the cars were stoned or run off, he gave the company the credit for $1, and that when depot was burned, he gave them credit for $25, on cattle account.

Cross ex.—Conversation was in Jackson; a number were present; don't recollect that J. A. Dyer was present at the conversation at Gardiner's grocery.

Joseph J. Sutton, sworn.—Reside now at Marshall, was at Michigan Centre last fall.

Know Abel F. Fitch, heard a conversation one night near Fitch's and Filley's houses, between Barret and I think Woliver, between 7 and 10 o'clock; heard Barrett say to W. that the cars were stoned last night. Woliver said yes, I gave them some myself, and said he threw a stone into them that weighed a pound and a half.

Heard Fitch say at Jackson, that if he had any friends at Jackson, he would advise them to go to Grass Lake to take the cars east before they got aboard.

At Morrison's grocery, in Jackson next day, after the depot in this city was burnt, heard Filley say "Morrison, have you heard the news?" "No, what is it?" "Why the depot at Detroit was burned last night." Morrison said, "the devil it is, I had a bill of goods there." Filley said "you are able to lose it." Also said "I suppose they will lay the burning to me, d—d 'em. I will show them that I can burn it as well out here as there." He also said something about going home and giving the company credit for a few dollars.

At another time at the Centre heard Filley tell Woliver he meant to throw the cars off. Woliver said he ought not to endanger the lives of innocent people. Filley replied, I don't care a d—n—they have been warned from one end of the road to the other, not to ride over it. Thought Filley was a little "sprung."

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Cross-ex., by Frink.—I was laying in the corner of the fence near Filiey's tavern, to see what I could hear, when I heard them talking. Was at the Centre watching 15 nights; had $2 per night for it. Have made an affidavit of part that I have sworn to; heard a few lines of it read this morning by Van Arman.

Patrick Morrison sworn.—By Van Arman—Live at Jackson; keep grocery; know Ammi Filley. Filley, the next day after the depot was burnt came in and asked if I had heard the news. I told him I had lost some goods by the fire. He said d——n the odds, you are able to lose. He said, I suppose they will lay the fire to me, and G——d d——n them I will show the company that I can burn it out here as well as down there. Said he had given, or would give the company credit for some amount which I don't remember; heard him say he had given credit when the Gazelle was thrown off. Heard him mention giving credit on several different occasions. One time when a woman was hurt by obstructions, he said it would come out of the company, in reply to a remark that the company would have to pay damages; don't remember who were present.

Fitch has often been at my grocery; have heard him speak of the cars; said the boys done very wrong in throwing off the cars; said it was very wrong, &c. I know George McMichael and Wm. Corwin; think I have seen them at my store together.

Cross. Ex.—The talk at my store was not private to me; said it so all in the room could probably hear it; about the burning said, d—n the difference, I suppose they will lay it to me, but I can show them I can burn it as well and be up here as though I was down there.

Direct Ex.—Know O. D. Williams, heard him speak of Holmes being hurt; it was last fall at my grocery; said he had nearly laid out one d——d railroad spy, and wished to God it had killed him; said he would kill a railroad spy quicker than he would a massauger. Also said he would tear up the track from Mich. Centre to Leoni, but he would make the company pay for cattle killed.

Heard him mention Westcott as a spy and made harsh remarks; don't remember exactly what he said; also heard him say he would like to have Spaulding's scalp d——d well; at one time heard him say, we gave the cars hell the other night, speaking of the cars being stoned a short time before.

Cross. Ex.—A part of this conversation was directed to me, that about Holmes; the balance was rather general. It was last fall.

Asa Burdict, Jr., sworn.—by D. Stewart—Reside at Eaton Rapids; before that, for one year, lived in Jackson; know Dr. Farnham: I was in Jackson last spring; in March or April saw the Dr. going into a grocery formerly kept by Showers, a country gent.; Corwin called the Dr. up and treated him, and then whispered and talked privately together; we went out together towards Bascom's Hotel;—took me one side to an alley, and said, I want to tell you something, for I believe you to be a pretty d——d good fellow. Think he was pretty well corned; he then said—the railroad—and here halted a moment, and then continued—hell and damnation! the railroad will all be blown up in less than a month.

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Did he say anything about the tools to do it with?

Objected to by Seward, on the ground that it was said after the depot wsa burned, and had nothing to do with acts before the 19th of November last, when the depot was burned.

Stuart said they intended to show that he had such instuments in his possession before Nov. last for the same purpose.

Seward said that was the thing to be shown first—it would be competent.

Stuart said the main object in getting out this testimony now, was the witness lived some ways off, and his family were sick, and he wished to return home, else he would have to remain several days, or return from Eaton Rapids.

Van Dyke urged the propriety of receiving this evidence, under the circumstances, at this time, as far as this witness is concerned.

Court said if it was proposed to prove the possession of an instrument to burn the depot the case would be nearer parallel: the court had a discretion to receive testimony out of the legitimate order, but the question had arisen, and had not yet been decided, whether this would be admissible testimony under any circumstances.

Before the court ruled, counsel asreed to take the evidence before the court, but not for the jury, until after the argument of the question of its admissibility should be decided; its finally going to the jury to depend upon the decision of the question.

Witness—The Dr. said $10,000 all gone to hell in one minute: said also, he had the tools to do it. The old fellow was pretty well corned when he said it.

Wm. J. Welling sworn—Live at Jackson, last fall heard a conversation between Fitch and Alonzo Bennet, in Jackson: Fitch made an estimate of the cattle killed by the road near Leoni, and said there had been forty head killed, and that they had already cost the Company over $400 apiece. Burnet told him he had better tell the boys they had gone far enough, and that a little labor or a few words from him, (Fitch,) would stop the depredations. Fitch replied that he told the boys to get pay for their cattle if they could, if they could not they must lay their plans so as not to get caught at it: that if the Co. would pay full value for cattle killed they would have God Almighty on their side and be prosperous.

Cross examined—In reply to Bennett, Fitch said he knew it was wrong and had told the boys they must look out.

John Dowdle sworn—Live at Jackson; had a talk with Penfield last summer at George Garder's Grocery: asked him what the Leonians were throwing the cars off the track for, and he said we are contending for our rights. He said consideable against the road: this is the only time I heard him speak of the road.

Cross examined—I asked him, "What are you Leonians throw the cars off the track for?"

Isaac Minckler sworn—Live in Jackson: know A. Filley, heard him speak of the burning of the depot at Mundy's grocery, in Jackson: he said the depot was burnt and he would go home and give the Co. credit for $50. He spoke of lumber being burnt at the

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Centre: when he mentioned it he kind'o smiled as though he rejoiced that it was burnt.

Cross examination waived.

Alonzo Spaulding sworn—Live at Grass Lake, Jackson Co., three or four miles south west from the station: know Freeland: he spoke to me in May '49 about obstructions in a culvert, near where we stood: he said he was going after his cow one night and there was a rail sticking up in a culvert, and before he got thirty rods off the cars came along and struck it, and smashed the lamp; think it was the 2d culvert east of the dry marsh; he said he was d——d afraid they would think he did it, and went on and left it.

In March last spoke to me about a certain fence I built.

Further direct examination waived for the present—the witness to be recalled.

Cross examined—He said he was passing along by the side of the road—did not say how near he went to the culvert when he saw the rail in it.

Henry H. Bingham sworn—Live at Grass Lake; have known W. Corwin ten or twelve years; I remember the locomotive Goliah being run off near Leoni last fall; the night it run off I heard Corwin talking; was on my way home from Michigan Centre to Grass Lake; was within about three-fourths of a mile of Leoni; some one drove up behind me, two in a buggy; I recognized Corwin's voice as one of these; they appeared to have been driving fast; heard them speak of the cars, and said they feared they would be too late; they struck their horse and said G—d d——n you go ahead—and passed me; as they were going past one of them in a feigned voice asked how far it was to Leoni—this was the person with Corwin; took it to be O. D. Williams.

I thought it was him when they first drove up and talked before they passed me; after they passed they drove very rapid; I tried to keep up with them but could not; suspected from what I had heard that all was not right; when I got to Grass Lake the cars were just leaving for the west, and were run off near Leoni; Grass Lake is some four miles east of Leoni.

Cross examined—The night was dark, could not distinguish them by sight.

Theodore Ladue sworn—Live at Leoni; know the Prices, and Mr. Lemn; don't exactly know Lemn's occupation; the Price boys are blacksmiths, and live about six miles from Jackson; have seen Lemn at Price's several times during 1850; have seen him there quite often this spring: he generally stays over night; never saw him there fishing; I live close by the lake; have often seen the Price boys fishing, but never Lemn.

Cross examination waived.

Van Arman said he now wished to raise and discuss the question of admissibility of testimony, relating to acts or declarations of defendants, subsequent to the act charged in the indictment, the burning of the depot, &c.; for instance, would seek to show that the defendants, in March last, employed a person to burn the depot at

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Niles, fixed the price for doing it, and actually delivered him an instrument, or "torpedo," to do it with—the same kind as they said was used in burning the depot at Detroit. He, Van Arman, said the admissibility of this class of testimony would frequently arise during the examination of the three or four remainig witnesses, on the part of the prosecution, touching this branch of the case.

It was agreed to take up the question on the 21st, at nine o'clock, to which hour the court adjourned.

SEVENTEENTH DAY—MORNING SESSION.

SATURDAY, June 21st.

The question of the admissibility of testimony relating to acts and words of defendants subsequent to the act charged in the indictment, (to wit, the burning of the depot,) for the purpose of identifying them with the burning and conspiracy, was raised and argued on the following propositions submitted by counsel for prosecution.

1st. The prosecution offers to prove that subsequent to the burning at Detroit, speaking of the expected collision of the cars; a person said to Freeland, defendant, you have carried your depredations far enough; and F. replied, they (the railroad company,) have not done with us yet; the excitement is quiet at present, but we are preparing to give them hell soon.

2d. That on or about the 1st day of April, 1851, these defendants hired persons to burn the Michigan Central Railroad depot and bridge at Niles, and for that purpose delivered them a match, and gave them instructions how to use it, told them it was a similar match to the one they had furnished Geo. W. Gay to burn the depot in Detroit; that they knew it would work well, because it had worked well at Detroit—also to give in evidence the preparations of defendants to burn the depot at Niles, the *res-gesta* attending the same, the kind of instrument they had for that purpose, and their identification therewith. Mr. Seward makes no objection to showing delarations &c. subsequent to the burning of the depot and which go to show participation or guilty knowledge, but the proposition in reference to the Freeland conversation having no relation to the depot burned, he excepted to. Will also object to receiving such portions of the *res-gesta* of the Niles matter as have no immediate relation to the Detroit burning.

With regard to the second proposition he raises no question, except as to the order of time—the principle question, therefore, was upon the first proposition.

Mr. Van Dyke said the prosecution would desire to give in evidence the acts of the conspirators subsequent to the burning of the Detroit depot, which leads to the inquiry—To what extent, on what principle, and for what purpose are they admissible?

He claimed, that the testimony was admissible within the definition, object and philosophy of presumptive evidence. Cited 1 Phil. on Evidence, 156, 166; 9 English Common Law, 52 3; 1 Greenleaf, 58.

In cases of this kind, much is in the discretion of the Court; I

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Phil. ev. 171; 13 E. C. L. 125. Testimony is competent for one purpose when not for another, 1 Phil. 169.

That this testimony is competent—

1st. To aid in the proof of the whole conspiracy and to corroborate that already given.

To give the whole history—to show the continuous transactions—to identify the defendants in the execution of portions of the entire plan, and thus to raise the probabilities that they were the parties who committed the particular part of it charged in the indictment.

That for this purpose, there is no distinction between prior and subsequent acts. Cited 1 Greenleaf, sec. 52; 1 Denio, 577; 1 E. C. L. 375; 25 E. C. L. 294; Swift's ev. 153, 154; 4 Greenleaf's Rep. 172; 3 Wheeler's Criminal Cases, 505 to 508; 1 Story R. 143; C. & H. Notes, 410, et. seq.

That where it is sought to prove the intent—the *quo animo*—the guilty knowedge—the connection of the party with the act—or any other similar thing not susceptible of direct proof, but resting on circumstantial evidence, everything connected with the main charge, springing from the same plan—part of the continuous transaction, throwing light on the whole, or calculated reasonably to raise the probability that the party charged was identified with the crime, is admissible to go to the Jury.

Mr. Van Dyke—illustrated, that if an individual had threatened to burn an entire block, was known to have commenced his threat and was found doing any portion of it, whether before or after any part was done for which he was indicted—each distinct act was competent in evidence to bear upon any and every other portion.

Mr. Van Dyke closed by saying that the prosecution had commenced by showing the origin of this dark and fearful conspiracy, to hear the evidence in which, made the blood run cold—that they had followed it down in its devastating career of crime, step by step; that they had exhibited the wreck and ruin which followed its fatal progress; that they had read the first pages of the drama, and now only sought to continue on and unfold the final scenes, destructive and terrible as they were, that from their lurid light the Jury might read and comprehend the nature as well as the horror of the whole.

Mr. Frink, for def'ts followed, said—The distinct question before the court, is whether a remark made by one of the defendants in the month of March, intimating an intention to commit depredations upon the Railroad, in the county of Jackson, in some future time, shall be admitted in evidence on this trial. To determine the question it is only necessary to know whether it will tend to show one of the three distinct facts charged against the defendants in the indictment in this cause—1st, that they were actually present at the city of Detroit, on the 18th of November last, and engaged in setting fire to the depot; 2d, that they advised or procured Gay to burn the building; 3d, that they feloniously received and maintained Gay, knowing that he had committed the offence. The general rule that testimony must be referable to the point in issue, as stated in 2d Russell on Crimes, 772, Roscoe, 57, Barn & Cres 145, is not disputable.

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Keeping that rule in view, what possible tendency can the proposed evidence have to elucidate the truth as to either of the three facts alleged against the defendants in the record. It would not have the remotest influence in satisfying the jury that any one of the prisoners was present at Detroit, at the date of the offence mentioned in this indictment; or that they advised or procured any third person to destroy the edifice; or that they had ever seen or harbored Gay. The case supposed by counsel, of a block of stores owned by one man—one being fired one day, and a second the next day—is not analogous to the present question. If one of the defendants had set fire to one of the stores, and on an indictment for the crime, it should be offered to prove that six months afterwards the defendants had overthrown the owner's carriage, it would approach nearer to a parallel.

Can the fact that any one of these defendants committed a trespass or misdemeanor in Jackson County, tend to prove an arson in Detroit six months before the date of the trespass or misdemeanor?—When several felonies are so connected as to form one continuous transaction, they may all be shown, for the reason that they are not distinct, and have a tendency to show the quality of the act charged. No question is made as to the guilty character of the incendiary act in burning the depot. If its loss was the result of design, it was a corrupt and criminal act. If the defendants procured the arson, they will not pretend that their connection with Gay was innocent. The rule allowing felonies other than in issue to be proved only applies when two or more felonies are concomitant. But when they are distinct, evidence cannot be given of an offence not described in the indictment. It is claimed, however, that subsequent acts and threats may be shown to identify the parties with the crime. Suppose Freeland, or any other defendant, did, in the month of March, announce that the cars would be obstructed, how will that show who was in Detroit last November, or that they had ever made a compact with Gay. Lastly, it is claimed to establish a conspiracy; I therefore again remark that no conspiracy is charged in the indictment. If, however, the prosecutor proposes to show a confederacy to establish the defendants' guilt of this arson, the agreement must be to procure the very act alleged in the record—in short, to burn the depot.

The destruction of the building.[2] not yet shown to have been occasioned by a criminal act. The counsel for the government seek to prove the conspiracy by showing what the defendants have done collectively and individually by word and deed. This cannot be done by proving any acts or words unless they occurred before the date of the offence named in the indictment, unless by confessions, 19 Eng. Com. Law, 123; 1 Greenleaf, 58, 59.

Therefore no word or act of any of these defendants can be shown to establish a combination between them to accomplish the destruction of the depot, which was done or said after the crime.

Mr. Frink closed his argument at 20 minutes to one o'clock.

Mr. Seward suggested, that the Jury need not be detained this P. M., as the argument of the question would occupy the entire afternoon session. The Pros. Atty. then suggested, that witnesses might

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also be discharged, which was agreed to, and the court took a recess until 2 o'clock.

AFTERNOON SESSION.

Mr. Frazer for Pros., continuing the argument, said,

That a man's subsequent conduct furnishes as strong proof of his guilt, as does his conduct antecedent to the commission of the offence; 2d Russell on Crimes, 5th ed., 728.

Mr. F. claimed to introduce such proof for the purpose of showing the character of the whole transaction ; to throw light upon the former acts, and as parts of a continuing conspiracy, tending to show guilt; also as tending to establish identity; to show the existence of a conspiracy, all to go to the Jury, who must judge of the weight of the evidence.

Everything which conduces to the proof is admissible ; the language of the party, as explaining his motives, and the objects of the conspiracy.

2d Russel on crimes, pp. 772, and the illustrations there cited; Crown cases, R. & R., 513.

It is immaterial, said Mr. Frazer, what the nature of the indictment is, if the facts involved a conspiracy. Where several felonies have been committed, in pursuance of a common object, they may all be proved as be ing part of the same transaction, although committed subsequently to the one on trial. Russell on Cr., 774 and 777, 19 E. C. L. 354,

The principle applies to civil cases; 12 E. C. L. 104. Mr. Frazer continued his argument to some length.

Mr. Seward claimed the closing argument, and said as Judge Goodwin wished to be heard, for the prosecution, he could now proceed. Mr. Goodwin also claimed the closing, when under the ruling of the court, the closing was given to the defence.

D. Goodwin, further arguing the question for the prosecution, said, that in referring to the numerous authorities on the subject, the only general rule which can be found, is that the other acts of the prisoners given in evidence must tend to prove the offence charged in the indictment, that the rule does not require that those acts shall precede that so charged; that if they have a *tendency* to establish the offence charged, they are admissible in evidence, whether they occurred before or subsequently. Mr. G. cited, 1 Phil. Ev. 2 C. & H. notes. 6 Randolph, 704; Story's Reports 142, 3.

He referred to the nature and extent of the conspiracy which the evidence went to establish, contemplating not only the acts charged in the indictment, but with the various other aggressions referred to. The burning of the depots on the whole line of the road. He said that if the evidence proved that some of the def'ts were engaged in the aggressions preceding and also in those subsequent to that charged in it, it served to identify them as connected with the whole conspiracy and all the acts done in pursuance of it. And that if the proof offered tended to identify any of the prisoners as connected with the offence alleged, or to confirm the evidence of the prosecu-

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tion as to the main charge, it was competent. He referred to the means—perjury—by which it appeared the defendants expected to screen themselves and commit their henious transactions with impunity; and the importance of eliciting all the facts for the consideration of the Jury.

Mr. Seward said he feared this morning, when this question was opened, that it would lead to too much of a good thing—argument—he did not intend, however, to occupy much of the time of the court; thought he could say all he wished to in three or four propositions. He contended that the declarations of Freeland, that "the road had not done with them yet; the excitement is quiet, and we are preparing to give them hell soon," was no admission on his part of the burning of the Depot; neither was the confidential ejaculation of Dr. Farnham, "the Railroad will all be blown up in less than a month—hell and damnation, $10,000 all gone to hell in less than a minute,"—amount to an admission relating to the burning of the depot, or have any bearing upon that act. He said, in the vocabulary of Jackson county, the term of "giving 'em hell" appeared to be quite common, and had a broad meaning—related to many things—to shooting, sinking them in the dry marsh, and all other acts seemed to be "giving 'em hell."

The term thus so often used did not go to explain any thing in connection with the burning of the depot, it did not explain how the flames were kindled, which suddenly roused this entire city from their slumbers to witness the destruction of that magnificent structure.—It did not seem to explain anything.

The counsel argued at length, illustrating and enforcing his points by reference to known and celebrated cases.

The Court.—The acts offered to be proved being embraced in the general scheme, and having a tendency to show that the defendants had not abandoned their scheme, with the last act proven prior to the burning, but still adhered to their schemes, and continued their efforts to carry them out. I think the evidence is proper to go to the jury.

The court adjourned until Monday, the 23d, at 9 A. M.

NINETEENTH DAY—MORNING SESSION.

MONDAY, June 23d.

The Court opened and Jury called.—Mr. Van Arman stated that two of the prisoners, Aaron Mount and Benj. F. Gleason, were sick and unable to be in court.

The necessary stipulations to proceed with the trial in their absence were entered into and filed.

Charles Rodgers sworn, by Van Arman.—Reside now at Niles; went there Jan. 1850; lived at Michigan Centre for about four years previous: am a cooper by trade; at Michigan Centre worked for Shoemaker; know Fitch, Filley, Moulton, Tyrrell, Grout, and all the other defendants except Burnett, Lemn, Beebe, Hill, Lang, Ackerson; some of them know only by sight. I worked for Filley and Fitch in harvest '49; near Filley's house on the road heard him

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speak of throwing the cars off; it was in fall of '49; they were running a hand car ahead of the train; said a stick of timber could be placed on the culvert so as to lean off the track while the hand car passed, but by means of a rope attached to the lower end a person at a distance could pull it so as to bring the timber in conjunction with the train.

Heard Fitch talking of the cars; think J. Wells was present, and several others; he said by placing a keg of powder under the track, and having a trail of powder to the track, it could be fired by means of percnssion matches under the rail; said he would like to see it done; have heard him speak of damages by the road in killing cattle, in justification for the depredations. Heard him speaking of a grand invention for throwing the cars off; either said there had been or might be a machine by which the cars could be thrown off, and the machine saved for another time: said in the noise and confusion of the cars being thrown off, the machine could be taken away.

At one time heard him say he was willing to be one to turn out with his team and tear up the track for some rods; somewhere when a freight train run over a log 20 or 30 rods east of the Centre near the west edge of the Dry Marsh; Spaulding was conductor. I saw some dozen persons standing near the old tavern stand, in sight of the obstruction, it was a better place of observation than at Filley's tavern; Mr. Fitch, Barrett, and Filley I think were there, I can't remember the others; I went there after the train had stopped; Fitch asked Spaulding what was the matter; he replied that some d—d hyena had been putting something on the track; and made some remark that he was ready to do something to bring them to justice; Fitch answered that they might come on, he was ready for them; he had two double barrelled guns in the house, and they were loaded; Fitch said they could not run in safety over the road until they paid full price for cattle.

Cross Ex. by Frink.—I worked for Fitch in harvesting in '49 both before and after I worked for Filley; I worked for Fitch some two or three days; can't remember which conversation I heard first, or whether it was during the day I worked for him; at the conversation about blowing off cars, can't say positively who was present.

At another time heard him speak of another plan to throw the cars off by breaking the iron chains, which held the rails &c.; I made an affidavit of these facts last spring at the request of Mr. Tielson; heard it read last Saturday; can't remember distinctly what the replies were to Fitch's remarks at those conversations they were general, by all hands; they all seemed to endorse his plans for damaging the road and cars.

One of the conversations was west of Filley's house; think several of us had been to see a "critter" killed; when the cars run off near the dry marsh. I saw Fitch in the crowd; think Spaulding said some d——d hyena had put an obstruction on the track, and he was ready to help bring them to justice, or something to that effect; don't remember that he mentioned using guns; did not see the obstruction until after the cars passed.

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Direct Ex.—When Fitch spoke of running the cars off by breaking the chairs, and he called it a "bull switch," some things were said between Fitch and Spaulding, which I can't remember. Fitch moved towards S. rather angry, S. was also excited.

A. Spaulding, recalled.—About conversation with Freeland in March 1851, at my residence at Grass Lake, we were speaking of difficulties of the road—he said if he was going to commit depredations on the road, he would risk any one's turning states evidence against him; said there would be only one who would see him, and he did not believe they would get him down as a witness against him; were talking freely about depredations—did not say he had committed any.

Morgan Wescott, sworn.—Lived in Tecumseh 11 years; shoemaker by trade. Know George McMichael—saw him in Clinton in August last, on my return from Ohio; saw him once in Jackson, back of Morrison's Grocery, there was some one with him; don't know who—it was in the latter part of September, near Morrison's barn. I overheard conversation between them, and stepped back out of their sight.

Seward objected to the testimony, because the witness did not know the person talking with McMichael, was one of the defendants.

Court said the witness McMichael, said he had a conversation with a person at that place, one of the defendants; that it was the only conversation he ever had there, and the testimony is admissible. Excepted to.

Witness.—Heard the man talking with McM., asked him to go in with him and tear up the track and burn the depot at Jackson, and said Mr. Fitch would pay them for it. I had not seen McM. before, on that day—saw him some 15 minutes after that, in the street. I am not much acquainted in Jackson, McM. and the man was on the west side of the barn. I was on the north side.

Cross Ex., by Frink.—I came to Jackson about noon from Clinton, was looking for a job at shoe making—did not apply to any one for jobs, as several in the streets told me the shops were all full. I returned to Brooklyn, did not stop at a hotel; don't know as I am obliged to tell where I got my dinner, or whether I had any—came to Jackson on a lumber wagon, don't know who I rode with; I got out in the streets of Jackson and left there; left Clinton about 7 o'clock. I went back of Morrison's grocery to find a privy, I remained there a few minutes; McM. and the other person came soon after; I started to come away, and saw them around the corner of the barn, and hearing them talking of the railroad, stepped back to hear wha they said.

They left before I did. I went that afternoon to Brooklyn, and stayed at Ladd's tavern and got a job; worked there some five months and lived in the house with McMichael; have seen him since I have been here, he told me it was at Morrison's grocery, behind, where he had been talking with the man. I have not been in Jackson since; I think the barn was not painted; the alley runs north, the grocery is on the north side of the street; don't know whether there

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was a street or other buildings north of the barn; never was there before and took no particular notice of the location. I was not subpoenaed here, Geo. McMichael came to Palmyra for me, and said he wanted me for a witness to swear to what I heard that man tell him behind the grocery, did not tell me what he had sworn to.

Wm. Dobbs sworn.—Reside in Detroit, am some acquainted with Fitch, Filley, Corwin, Myers, Williams and some others of the defendants. I formed their acquaintance in Leoni; think I went there in February, 1850. I boarded with Mr. Kirkendall, at Leoni. I remember an interview at Hadden's grocery; Williams, Myers and Corwin were present, not certain whether the Prices were there. The railroad company was spoken of. think Williams made the proposition to me to nail a plank on the track, on the embankment or bridge. I declined to do it, and he said I was a coward and fool. Said they wanted another hoist, and spoke of powder; said if that wouldn't do they would try something else.

I declined having anything to do with it; he said the Price boys would do it, and wanted me to tell them to come down to the grocery; they were up at Kirkendall's where I was going. I told them when I got up there, that Williams wanted them down at the grocery.

I went to Jackson once, with Williams, Jenkins and Myers; I think about the 1st of April; we stopped at Filley's on the way; saw Fitch and Filley and E. Champlin and several others there, heard a conversation about a cow killed on the road belonging to Mr. Winans. Fitch said he thought the company would be glad to compromise with them soon, or they would be sorry for it, and asked me if I was going to engage with the company the next season.

We went on to Jackson, and Williams and me got into a quarrel at Warner's grocery about a bet on the comparative size of a gold dollar and a five cent piece, he dared me into the back room to fight.

He said I was a d—d scoundrel, and he could whip any man engaged with the railroad company: think he said this to young Warner.

At Leoni, in 1850, about March or April, at Kirkendall's tavern, Corwin, Ed. Price, Williams and Myers were present, something was said by Kirkendall about Williams going to New Orleans, on account of his being suspected of something about the attempt to blow up the bridge, and that the company were going to arrest him. Corwin said he was a fool to leave, for the boys could clear him, said they could prove that that horse, (referring to his horse at the door,) was a blacksmith shop, and every hair on him a candle if necessary.

At Hadden's grocery, Williams, Corwin and Myers were present, Williams asked me if I wished to go into a speculation to make some money; told him I did; he asked me if I knew where the steamers May Flower and Atlantic laid up; I told him I did not; that Ward's boats, I believed, generally laid up at Newport.

He said there was a speculation to be made, that they wanted those boats to be brought to the water's edge; said to me, you know all about the arrangements about the boats, and there is $500 ready

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for you if they can be burnt. I told him I thought it would be a bad speculation; he said my expenses would all be borne, if I had to go to Buffalo, I could live like a gentleman; said if I succeeded, I could have $500, and he would refer me to the best backers in the county for the $500; spoke of Fitch, Filley and E. Champlin. I told him I did not want to get into any such speculation. He called me a coward.

Cross examined.—I went out there in 1850; before that, up to the fall of '49, I had been a runner for Mr. Andrews' Railroad Hotel, on the lakes; I had no partiular business at Leoni; had an object in view, to get board cheap; stayed at Kirkendall's some six weeks; have frequently seen Williams, and been with him for two years past; we were in back part of Hadden's grocery at first conversation with Williams. He proposed to me to assist him and Corwin in putting a plank on the road, nearly opposite the grocery, or at the bridge; when I left the grocery, they were playing cards; and asked me to tell the Price boys to come over from Kirkendall's, when I got home.

We stopped at Filley's on the road to Jackson, where the conversation about the cow took place. Williams said the Company would be glad to eat salt out of their hands in a few days; also that the Company should be made to pay double value of cattle. The conversation was not addressed to me, but in the room, and I heard it; I was engaged a part of the time pulling sticks with Fitch, for a glass of grog. Fitch took part in the conversation.

I had a difficulty with Williams, at Warner's grocery, in Jackson, and whaled him slightly; he sued me and I was bound over, and finally it was settled by my paying private damages. The proposition to burn the boats was before the quarrel in Jackson. After I returned to Detroit, I went to Milwaukee, as agent for Mr. Ward's boats. Have not made an affidavit of this matter. Mr. Wood made a written statement of my knowledge of facts last winter. I know Mrs. Kneeland, of Leoni; she came in the same day that I did.—When I went east, I went to New-York.

Direct examination.—The first conversation with Williams, was about putting the plank on the track; the talk about burning the boats was between that time and the time we quarreled at Jackson. We had another quarrel a few days after, at a ball at Leoni, where Williams abused me. I knocked him down and licked him a little, as much as I thought necessary, and left him. He sued me for private damages, and I paid it.

Court took a recess till 1 o'clock.

AFTERNOON SESSION.

Henry R. Nichols sworn—Reside at Grass Lake; know Fitch: at a county convention at Jackson last fall, in front of Bascom's hotel, heard him speak of the railroad company: I spoke of the injustice of the railroad company in not paying for cattle killed, and also said it was a great wrong in laying obstructions on the road. His reply, was in substance, that it was the only means of bringing the

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company to terms. I then said that the policy of the road was bad, because it would cost them more in lawsuits than it would to pay for the property. In reply, Fitch said there had been an estimate made of the cattle killed between Crass Lake and Jackson, and that they had cost the Company some $400 per head. This is about all I heard him say, there might have been other things said but don't remember.

Cross examined by Frink—this conversation was in a public place, and several were present, don't know who. Fitch did not say that he had sustained any loss by the road: he did not approve or disapprove of the depredations.

Titus Dean sworn—Reside at Flint: know Fitch; was introduced to Wm. D. Westcott by Fitch, in March last, at Johnson's hotel, in this city. Have seen Henry Phelps: he was at Michigan Centre in 1840 when I was there: asked Fitch to go home with me, and he said he could not, as he was expecting a friend in from Jackson on the cars. Saw Fitch talking with some one in the depot after the train came. Have seen Phelps, but am not much acquainted with him: think I might not have known him in the night, if it was him.

Cross examined—they were working on the new depot; I was not stopping at Johnson's hotel: my family were in the city.

Mark English sworn—Live in Jackson: know Fitch: worked for him in 1849; one day, at his house, he said he had laid a plan to fix the road, so that the Co. would not be able to hire an engineer within one year from that time to run the road: asked him why: he said because they would be afraid of their lives: he also said, "if they knew when Brooks was coming over the road, he never would be able to get through to the end of the route."

He was speaking of the people living at the Centre: I know Grant, one of the defendants: heard Grant say that it was laid to the wind running the cars of the side track, on to the main track, so as to come into collission with the train, and also said the wind was in the opposite direction, at the same time putting his hand on his shoulder, he said it took more than one old shoulder to shove the cars off the side on to the main track.

Was building a chimney for Barrett; spoke of the iron they put in the chimney: said it did not cost them any thing, and that it would be more plenty soon, as there was a plot laid by which the Co. would not be able to hire an engineer to run the road within a year, and it would have to be thrown up.

Cross examined—Think I first spoke of this matter after the arrest; asked Dowdle if they had arrested Grant: he said he did not know: I remarked they ought to if they have not.

In the conversation with Fitch, he said we have a plan laid about the road. I remember this particular conversation, because it astonished me at the time—often thought of it when I heard of depredations on the road.

Joseph Waldron, sworn—Reside in township of Jackson; I know several of the defendants; known Ami Filley for 15 years. Before

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he went to the Centre I lived within eighty rods of him. After the Depot was burnt heard Filley speak of it at Morrison's grocery in Jackson. The conversation was with Dr. Farnham. F. asked the Dr. if he heard of the fire. Said he had. They talked low and private part of the time. Filley said as soon as he heard of it he gave the Company credit for $25, and wound up by saying, either, he was "in for $25," or, "good for $25," don't remember positively which expression he made use of. This was after the whispering. Part of their conversation was private, and part public and open.

Cross examined by Frink—This, I think, was the next day after the fire. I think Morrison was not in the grocery at the time, there were several in.

John D. Price, sworn—Reside at Grass Lake; know most of the def'ts. Live about a mile and a half from B. F. Burnett; he had a cow killed on the road in June, 1850; had a talk with him about it. About a month before his cow was killed, we had a critter killed also; talking about it, he said we could get full value for it, but it would cost more than it would come to. After his cow was killed I asked him if he had got pay for her, and he said no, but he would have full pay or full satisfaction before he receipted for her. I was rather joking him for not commencing suit, as he was a lawyer, and had told me we could get pay for our's.

Remember when the Goliah was run off near Leoni; saw Burnett that evening, coming from the east with a horse and buggy, go down south across the R. R., driving very fast; he was gone 15 or 20 minutes, and came back, as I supposed, though I did not see him, but heard Bildad Bennett say "how do you do, Judge Burnett?" I was on the steps. Some one was passing. I could not say whether it was in a wagon or buggy: I did not look to see who it was, I supposed it to be Burnett, from what I heard said.

Cross examined by Frink—Did not know there was a child birth at Burnett's house that day—have lately heard there was; think there was a woman in the wagon with him. I was at Leoni once when there was a meeting, which I believe was called a "railroad meeting;" Burnett rather seemed not to approve of the proeeedings of the meeting.

Dr. James A. Hahan sworn—To Van Arman—Reside at Marshall; I was on the cars the morning of the arrest of some of the defendants; came down as far as Chelsea; saw Fitch, Tryrell, Filley and Freeland aboard; heard a conversation between you [Van Arman] and Fitch; he asked you to see the warrant upon which he was arrested; you showed it to him, and he remarked, that he had a slight acquaintance with this Henry Phelps some years ago, before he went to the State Prison; since then he had known but little about him. I think the conversation was voluntary on his part; did not hear you attempt to draw him out on anything about the arrest. He said it appeared by the warrant, that he was implicated with a certain Mr. Gay, for burning the Depot; said he never knew Gay, and never heard of him.

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He then paused a few moments and again turned to you [Van Arman] and said, *I believe that old Gay has turned State's evidence*; I had not before heard of Gay, and did not know who it was; during that morning Freeland, G. Filley, and one other of defendants were sitting together in the cars talking; I heard them say that if they could get hold of that d——d Hank Phelps, they would make mince meat of him, that he had been with them all winter pretending to be a friend, and had now exposed the whole matter; I was setting near them and overheard the whole talk; I pretended to be asleep during the time.

Cross examined by Frink—The talk between Fitch and Van Arman was between the Centre and Chelsea; don't remember exactly where it was; think Fitch asked Van Arman to come and set with him; I set the next seat to them; don't know Mr. Warren, an officer on board, at the time: Fitch made the remark to Van Arman that he believed "old Gay had turned State's evidence," but not in answer to anything said by Van Arman; Van Arman did not ask him any question about the matter of the arrest; think Fitch asked him to come and set with him as he wanted to speak to him.

Nathaniel Huntington recalled.—Had been to Jackson and was going home, met Freeland; saw a train coming out of Jackson, and another train coming from the east; I spoke to F. to make some sign to have them stop, as they would run together; he said no, d——n 'em, let them; I want them to run together: and said he did not see what I was working for the road for

Had a conversation with Corwin, at one time. Had a pamphlet he pulled out of his pocket, which he called "the railroad dream," and read some from it about a poor man having his cattle killed, and sued the Company for it, but had to withdraw the suit and pay the cost; he said, "by God, the people of this town will not stand such operations." I have not got the pamphlet with me. At another time in Jackson, last year, I said to him, "I suppose you fellows down there have done enough, or gone far enough;" he said it is quiet now, but we are preparing to give them some soon. Filley said the Company should not join fences with him on the road, which would prevent the road being fenced so as to keep cattle off.

Cross examined.—Filley didn't say they had not paid for part of the fence he built.

George Boulton sworn.—Lived at Jackson 8 years; know A. Filley, heard him speak of the burning of the depot a short time afterwards; spoke of a water station built at the Centre, and that Mr. White had not done as he agreed; then spoke of a depot being burnt, and said he was glad of it, and had given the Co. credit for $50 on account of it.

Cross examination waived.

Wm. T. Purcell, sworn.—Resided in Jackson 14 years; know A. Filley, Corwin and Williams; I was at the Centre when the locomotive Rocket was run off last of August or 1st of September, about 9 P. M; saw Corwin there with two others; 20 or 25 minutes before the train came along; C. said they had been to a husking bee; but

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did not think he should go again in the open field; it was a pretty cold night; they asked Filley to treat which he did; a short time after Grant came in and said the passenger train had run off on the east switch. Holden, who was with me, said let's go to the train and they commenced talking privately together; this was in Filley's bar-room; they were talking privately when Grant came in. In reply to Holden, they said they would be along soon; but they did not come; we went back and found them at Filley's.

Cross examined by Frink.—Don't remember where they said they had been to a husking bee; think he might have said they had been at Champlin's.

David Stuart, Prosecuting Attorney, here stated that this branch of the case was now through with, and the balance of testimony for the prosecution would go more directly to connect the defendants with the burning of the Depot. As the hour of adjournment had nearly arrived, he would propose to take up that branch of the case in the morning.

The court adjourned until Tuesday the 24th at 9 o'clock.

NINETEENTH DAY—MORNING SESSION.

TUESDAY, June 24.

Henry Phelps recalled, ex'd by Van Arman—Reside now in this city: lived here nearly three months; previously lived in Sylvan, Washtenaw Co.; lived there nearly two years; spent 1 season there some nine years ago; lived in Sharon,same county, four or five years; know Fitch, two Filleys, Burnett, Williams, Freeland, Showers, the Price boys, three Champlins, Farnham, Laycock, Barber, Gleason, Myers, Pennfield, Hill, E. Smith, Mount, Tyrrell, Ackerson, Grant, Corwin, of the defendants; known some of them six or eight months, and some ten or twelve years; known Fitch some twelve years; first in 1840, when I lived near him; during the last fall and winter was with him a good deal, also many of the others; in December last, was engaged by the U. S. Dist. Att'y at Marshall; after that I was employed by R. R. Co., to ascertain, if possible, who had committed depredations upon the road, and who burnt the depot. I commenced for the Co. about the middle of Jan. 1851; after that was with many of the defendants once or twice a week up to the time of their arrest; I saw some of defendants in about a week after I commenced for the company, in the last of January; the first man I saw was Dr. Farnham; had had a talk with Fitch about the road in December at his house; went there to talk with him about the matter; I saw Fitch at the State Fair, and he invited me to come up to the Centre and enter into some counterfeit money speculations; we first spoke of that matter; he proposed to me to take an interest in it; I spoke of my inability to do it; and he said he could put me in the way of making a raise, and spoke of the R. R. being a curse to the community along there.

Said that he and some others had joined together to see the people's wrongs righted and had already done the road considerable damage, and wished to carry the matter farther; that they deter-

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mined to persevere in injuring them until they brought them to their terms. In order to do it he wished to get one of the depots on the road burned, either at Ann Arbor, Marshall, Kalamazoo or Niles, and wished to employ some shrewd person to do it, and would pay him for it—wanted a person who was smart enough to do it and not be caught at it; and said if I would do it, he would raise $200 to pay for it. I told him it was a new matter to me, but was ready to engage in anything I could do with safety that would pay. He told me if I did not wish to do it myself, I perhaps could get some one to do it for a song and I could have the $200 myself. I told him I would let him know in a few days. Mr. Fitch in the mean time referred to my misfortunes, and said he sympathized with me for the wrong I had sustained in being wrongly convicted and sent to prison, that my reputation was ruined, and I might as well place myself in easier circumstances. This conversation was at his barn, and lasted about two hours. He asked me to stay to dinner, think I did not stay.

Think at this time something was said about the burning of the depot. Saw him next in about a week, on a Monday, at Jackson, in front of Holden's hat store; had but little talk there. He told me the "boys" were going to be at the Centre the next day, and I had better be there; think he said he couldn't be there himself; told him I would go down and did go.

On Christmas day I went to Filley's tavern and found Filley, Corwin, Price, Showers, and Hill and many others; think there was a shooting match there; Fitch was not there; first had talked with Filley about railroad matters; he asked if I had a talk with Fitch about R. R.; told him I had; he asked me if I was going to accept his proposition; told him I thought I would, but had not fairly decided, but thought if I could get a fine pair of twin oxen of Fitch's in part pay, that I would accept the proposition; Filley said he thought Fitch would let me have them under the circumstances, and said the balance would be paid in money.

In Filley's ball alley, I spoke to him of the danger of burning the depot; he said it had been done, and would be done again; said he would tell me how it was done, and could be again; said they had made a match and sent it to Detroit during the fall, to a man who lived there, with instructions to place it in the cupola of the Depot; that it was placed there, and went off first rate, just as they expected. He told how they made the match: said they paid the man $120 for burning, after the act; that the money was sent down with the match, but not paid over until the burning; said, of the $150 he paid $30 for his share; he described the match; said it was made of a block containing several holes lengthwise of the block, filled with combustible matter, and small holes in the centre, glazed or varnished, filled with turpentine, and sealed over, so when the fire was communicated through the holes or chimneys from the other end, it would melt the wax and communicate with the turpentine.

Think he said the block was about seven or eight inches in diameter; the holes containing the turpentine were varnished to pre-

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vent it soaking into the wood. The block was to be placed in a box with combustible matter, and two quarts of turpentine.

He said they could or would get up another one similar to that, if I concluded to accede to Fitch's proposition, and would give it to me to do it with, and would pay me two hundred dollars for doing it; said they had banded together there and made a solemn oath, that the cars should not run peaceably through there for 3 months; this talk was in the ball alley; there were several in; think Lemn heard part of the conversation, but don't think he said anything. Price joined in the talk; Filley asked me if I could not throw the cars off near where I lived. I told him the switch there was always kept locked: he said that made no difference—that he and another fellow in coming from Leoni, took a lever and moved the track so as to turn the engine off into High's garden; had talked also with Eb. Price; he spoke of being indicted for burning some wood, and said he understood I had some talk with Fitch about joining them, and he wanted me to assist him in the trial; said they could get along well enough only for one or two witnesses, naming Sherman, Wescott and Spaulding; said they could impeach Sherman, and get Wescott out of the way; and as for Spaulding, he never should appear —asking him why; he said dead men tell no tales.

Price said he and Filley displaced the track with a bar, coming from Leoni, by which a man got his leg broken: if they did it again, they would fix it so as to break every one of their d——d necks; it was not done right the first time. He told me on that day or soon after, that the burning of the depot in this city cost him $10; also, spoke of moving the track a mile or so west of Leoni, which threw off a passenger train; said Corwin, Woliver, Filley, and his brother done it by breaking the chairs on the culvert, in expectation of the the eastern train; but it did not come in time, and the western train ran off.

He asked me if I could burn the Niles depot and the bridge, and catch most of the engines on this side, so they could have no means of using the road west of there; said they would raise me $200 for doing it; that Fitch and Filley would pay $100, and they would make up the balance, and furnish me as much counterfeit money as I could pass, for nothing; told him I thought I would do it if I could get Fitch's twin cattle; said they could arrange that with Fitch. I spoke of the danger, and said if I was detected, I should suffer; he said no, they could swear me clear; that Fitch's influence was unbounded, and he would stick by us.

I had a talk with Corwin, that day, about burning a pile of wood, for which he was then indicted. He said they had banded themselves together by an oath, that the cars should never pass there for a month together, without paying homage to Michigan Centre.

He spoke of burning the depot at Niles; I agreed to do it if I could get Fitch's twin cattle. Corwin said Fitch would give up every thing, even his wife, if I wanted her. Said if I would not do it, he would; I made some objections to the distance, and asked if the depot at Jackson would not do as well. He said no; that was near

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home, and they could burn that at any time; for instance, when his trial for burning the wood came on, they would show them a Yankee trick, by burning the depot at Jackson.

He said he tended the switch at the Centre during the fall, and by taking a bar had bent it so as to run the cars off; if I did not believe it, I might ask Filley. They asked me to come up and see them again; I told them I would not definitely agree upon the burning then, but would let them know in ten days; if I did not come up they said they would come down to my place and see me. Fitch was not there that day; he told me the day before at Jackson, that he should not be there. I staid the night before at John Palmer's, near there. I had been north of Jackson; my wife was with me, and I was on my way back.

Some few days after New Year's, Myers came to my house and wished me to go up, as the boys at the Centre wanted to see me; they would be at Leoni the next day if I would go up. I went up, but found none of them there. I went to John Palmer's; he lives between Leoni and the Centre; found Freeland, Laycock and Penfield there: think I stayed to dinner. Palmer asked me if I knew Laycock had become a railroad spy? Told him I did not know any thing about it: he then turned to Laycock and told him if he turned spy, or exposed the boys at the Centre, he ought to die in a minute or go to prison, and he would do all he could to get him there.—Penfield charged Laycock with being a spy, and Laycock admitted he had been to Detroit with some of the Railroad folks, but he knew enough to take care of himself. Penfield said to him, Miner, if you do turn against us, it will be the means of getting you in the State prison; for you know the pistols you got of Fitch; I will swear they were not loaded when he handed them out, and we know who afterward fired them off. He also spoke to him about obstructions at the Centre, and said you know who placed them there; we can prove who did it, and you can't. I think young Blackburn was present, and also Palmer's family. Freeland asked me if I was going to the Centre; told him I thought not, as it was getting late; he said Fitch and the boys want to see you up there; he soon after left, and by-and-by I went home by way of Leoni, where I found Freeland, Williams, Price and Corwin. I was riding along and heard a call; I halted, and saw Wm. Corwin and others on horseback, and we rode up to Kirkendall's tavern. Had a talk about Railroad; they spoke to me for not coming to the Centre; I apologised for not going there; Corwin asked me if I designed to accept the proposition to burn the depot; I told him I would be up the next Tuesday and close the bargain, if Fitch would come to my terms and let me have the twin oxen. Something was said about preventing Laycock from swearing against them; said he had been seen with Wescott, a spy, and had also been to Detroit; this was on Saturday.

Freeland said the best way to get rid of him would be to hang him up on a tree until dead. Corwin thought it would be better to send some counterfeit money to Detroit and place it in his pocket and have him arrested and jugged. Williams said he had a better plan

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—said you know I was the means of throwing off the cars west of Leoni, though I was at home and abed, and we can lay it on to Laycock and swear it on to him. Corwin said he would swear Laycock came to him a day or two before the track was moved and wanted him to help him do it, and soon after he would swear that Laycock told him he had done it himself. Freeland said he would swear that Laycock told him before that he was going to do it, and subsequently that he had done it. It was agreed that this plan should be carried out, if Laycock made any exposures. Williams said it cost him $17 to burn the depot, and should have to pay more; afterwards told me he had paid $20 in all. Freeland said he had paid $14 for burning the Detroit depot, and should have to pay some seven or eight dollars more to make up the $200 to burn the Niles depot. This talk was at Kirkendall's tavern.

The next Tuesday I went to Mr. Laycock's and stayed all night; next morning my horse was lame and Laycock carried me to the Centre. Stopped at Filley's and found Fitch, Filley and Ackerson in the ball alley.

Think I first talked with Fitch, first about Miner Laycock and the plan made the Sunday before to prosecute Laycock was repeated, and he said it was a good plan if stuck to, he said the rule among them was if a man turned traitor, to kill him, if no other way to shoot him on the stand, but Miner was a kind of weak minded boy, and State prison would do for him.

Then spoke of the burning; told him I had come to close the bargain to burn; he said the balance over the $160 he should charge for the twin oxen, he would pay me in money; said it cost him a cow and $45 for burning the Detroit depot; told me this several times; the twin oxen I think were the nicest pair of oxen I ever saw; I told him I was unable to bear the expense of going to Niles, in case the match should fail; he said if it failed they would bear the expense, but it never had failed, and it never would, there was no danger.

He (Fitch) spoke of the depot in this city; said they had prepared the match at the Centre and sent it to a man in this city, and paid bim $150 for burning the depot; said it was so constructed as to burn a given time, and they gave instructions about it; he did not tell who the person it was sent to; but said it had been done as directed, and when it burst out, it spread so rapidly that all the water in the river could never extinguish it; said they had injured the company to the amount of about half a million of money during the past year, and would double that the ensuing year.

He said they were going to burn the new depot as soon as they got it finished; said they had warned people not to ride over the road, and as they knew better than to do it, he did not care a d——n who they killed, if it was the Governor of the State. In case I got into difficulty in burning the Niles depot, he would bail me out, change the venue and remove the case to Jackson, where he could get witnesses to swear me out.

He (Fitch) said his influeuce there was great and that all the new officers of the County were pledged against the road; he could do

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better with the new officers than he could with the old ones; said he could get a host of witnesses to put down a traitor or to screen a friend, and named a large number; said he could impeach the best man in Jackson Co., who would come up and swear against them; said he could get the best men in Jackson Co., to assist him in difficulty. Heard Williams say a witness might go before a grand jury against them, but never would live to go before a petit jury; heard Fitch and Corwin make similiar remarks; some time in January, Mr. Darius Clark wrote me a letter, and afterwards came to my house; I went to the Centre after that; the time Laycock took me there was about 9th or 10th of January; found Fitch at the ball alley; had a talk with him alone; he spoke of Laycock; said he was in Detroit and wanted something done to prevent his exposing them; Wm. Lang and H. Wakeman came in, and broke off the conversation; after they left, Fitch spoke to me about burning Niles depot; took me into Filley's bar-room and then into a small room built into the bar-room, and exhibited to me a match, which he said was made like the one used to burn the Detroit depot; said they would give me this or another one, to go to Niles with, and said they were preparing to give Detroit another touch, as they were getting pretty well built up there again; this match corresponded to the one described by Filley, in construction, but not exactly in shape; this was very similar to the one afterwards given to me to go to Niles with and fire that depot.

This small room is built on the south west corner of the bar-room; the match I think was not charged, but all ready to charge—said they would give me such a one, which would burn a given time, so I could get away before it broke out, and when it broke out, there was not water enough in the river to put it out, wanted it done about the time Corwin and the others were put on trial for burning the wood. They said Filley had gone that day for some counterfeit money for me; Filley was not there that day. Between the time I employed for the road and the time I came to Detroit in February, I had frequent conversations with several of the defendants.

I think Fitch showed me the match the last of January, and saw it again before I came in; think I saw Fitch the Saturday before I came in, at Jackson. An arrangement was made for him and me to go to Detroit the next Tuesday to see what could be done with relation to three or four witnesses who had left the Centre and gone to Detroit, as he supposed to expose them.

Also said when I was ready to go to Niles to call, as he would not detain me long, all things were ready. When at Jackson I saw Dr. Farnham, he drew a tooth for me, after which he said Fitch had told him that he had arranged with me to assist them in destroying the road, and thought from the experience I have had, I had learned to be a straight man. Said he would make a certain set of teeth for my wife, and charge me nothing for them if I would take hold of the rail road matter, and do it up right; he that day fixed my teeth.

He said there had been several unsuccessful attempts, which had failed to destroy the road; they had made fools of themselves. Said he was trying an experiment; was building a machine to blow

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up the road, which he thought would work and blow the road to hell; think he had been drinking some; was not exactly drunk or sober; was not so drunk but I trusted him to pull a tooth for me, said if I would come over again some time, he would show me the machine, and would go with me down to the Centre.

My wife and I called at John Palmer's, one day, and P. said Miner Laycock had been to Detroit, and he was afraid they would entrap him, for the Railroad Co., said he had told Miner, that if he went for the Railroad Co. against the Michigan Centre Co. he ought to die in less than a minute; my wife was present. Laycock soon came in, and P. charged him with being a spy, and he denied it. I was at Grandison Filley's once. I think it was before I went to Detroit; O. D. Williams and young Corwin went with me; met Grant, Barrett, Showers, Wm. Warner, W. and L. Champlin and N. Credit; Ackerson and several others were there. G. Filley lives two miles north of the Centre; went from there to Ami Filley's; Ami said he had a turkey killed by the cars, and the Co. could take their choice, to either pay him $4 for it, or leave the engine up at Green Bay, a place where the cars ran off.

Spoke of the Lester trial; Williams said they took him for a witness, and also took him before the grand jury, and got the Attorney General to come out from Detroit to question him, but did not get anything out of him—he told Lester they would swear him clear, and they did it.

Here the Court took a recess until one o'clock.

AFTERNOON SESSION.

I stated that we went to Grandison Filley's—the reason we went there, they said there had been some buffalo robes stolen the night before from A. Filley's tavern from a man from Jackson, and they were afraid they would be down and make a fuss about it—so we had better go up to G. Filley's to stay. They said my property would be safe there as they would not steal from a friend.

I appointed a time to come to Detroit with Fitch, but was too late for the cars. I came to the city the next day and found him waiting for me at the Depot. I think this was on the 12th Feb.; got there some 7 or 8 o'clock in the evening. I think it was on Wednesday. First saw Fitch as I was getting off the cars; he asked me why I did not come the day before. I told him; and he said I was still in time to do him some good. We went to the trunk table in the Depot and had a talk. Two men were standing near him; think one was Doan, and Fitch said the other was Westcott, whom I did not know at that time; was with Fitch about half an hour; during that time no one else had any talk with him.

Holden, of Jackson, came down that day. I did not see him talk with Fitch; Fitch, said he was afraid something had happened to prevent me from coming at all. During the conversation, spoke of three or four persons, viz: Wells, Caswell and Laycock, who had come down from the Centre; said he that day had a talk with Wells and from what he could find out, they were letting their guts out to the railroad—were going to expose all they knew about them at the

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Centre, and some means must be provided to prevent their doing it. Speaking of Wells he called him "Josh;" said "Josh" told him he had not made an affidavit; but he believed he had. Said one of two things must be done, either to put some counterfeit money in their clothes and have them arrested for passing it, or lay the burning to them. I told him I would see them next day, and we would adopt some plan to lay them out;—told me to come to Johnson's and he would be there all the while after dinner.

Next day, first met him opposite Newbury's warehouse; he asked me to go over to the Railroad Shop and see Laycock and see how he felt; said he was working on the 2d floor of depot shop at the buz saw. He spoke of burning the depot here again; said he had seen Gay, and G. had offered to burn it again provided he would pay him for doing it. Don't know that he had ever before mentioned Gay's name. I knew Gay—had known him 12 or 14 years. He asked me what I thought of the plan of having Gay do it, and I replied I had no objections only I wanted the funds myself. He said that would make no difference, as they could furnish me with all I could do on the west end of the road,—asked me if I had seen Gay—told him not—said he was out there at the grocery.

I asked him if Gay could be trusted—he said "he done well before, and I think will again." I told him I thought the new building was so new and green that it could not be burnt—it would prove a failure. He said, no matter—he guessed the R. R. buildings would not cover as much ground after Gay had got fairly ready for them; wanted me to see Gay; told him I would after I went and saw Laycock; said he (F.,) would be round at Johnson's, and would have Gay at a certain place where I could see him on my return from seeing Laycock.

I went over and saw Lacock; had but little conversation with him, nothing about this matter; came back and found Fitch coming out of Johnson's bar-room; he met me half-way across the street to the depot; think I was not coming very fast; it had been raining that day. He met me and shook hands as though he had not seen me before. I was somewhat surprised at it, but soon saw that some man was looking on, a stranger to me; he asked me if I had bought my fish and when I was going out. I asked him where I could get my fish, and he said he thought round the corner, giving a knowing smile and nod, pointing towards the dock. I went that way and when I got opposite Savanac's grocery, I met Gay. This was the first time I had seen Gay since I came to the city, I had a coat on that I bought that morning to go to Royal Oak; had been there that forenoon; my pants were inside my boots, had an old glazed cap on.

Fitch was very well dressed; don't remember whether he wore a hat or cap.

No other one but Fitch met and talked with me there that day. I never met and had a like conversation there with any other person.

I had a talk with Gay when I met him. [Frink objected to giving Gay's declaratians to witness as evidence. Waived for the present.]

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Gay was standing in the grocery door, apparently watching for me when I first saw him.

I saw Fitch again next morning at the Depot, and talked with him; think he told me he had closed a bargain with Gay the evening before, to burn the depot again.

Fitch said he gave Gay $50 in cash, and two matches similar to the one he burnt the depot with before; said he was to pay him $50 more when he had burned it; he subsequently told me he was to pay him $200; I don't know why he made the different statements; he said there was one object in getting Gay to do it, as he lived here and knew all about the depot: he said he should not go home until some disposition had been made of these witnesses, by either enticing them away or something else; he wanted, he said, that I should go to Niles, and light up there the same time that Gay did here: said it would make a very luminous appearance to have the State lit up at both ends of the road at the same time; said he should go home as soon as he could arrange matters about those boys, and then wanted I should be ready any time when Gay was; said he had a woman they brought to town, who was going to aid in placing counterfeit money in the possession of these witnesses, (Wells, Laycock, and Caswell); don't know that he told who the woman was; she was to stay at Gay's; a Mr. White was standing near at a part of the conversation; I went out on the cars that day; after I heard of an attempt on the depot through Gay, I went and found Westcott; I was not acquainted with him; I had been at Joy's office, but did not find him in; I saw Fitch the next Tuesday at Dexter; said he had stayed over night at Ann Arbor.

At that time he said he had made arrangements with regard to the witnesses with one Joe Dows; said he had left some counterfeit money with Dows, who was to get somebody to get the boys to go over to Canada, and have some counterfeit money in small cases, and slip some into their pockets; they would then try to pass counterfeit money, and on being charged with passing it, they would say they got it of the boys, and on being arrested and examined it would be found in cheir pockets in the said cases; and that would convict them, as it would be of the same denominatien. If that did not work, they were to be charged with stealing some property. I rode as far as Francisco's; he spoke of Westcott on the cars; did not blame the boys as much as he did Westcott, as he had bribed them away from their friends at the Centre. Said Westcott had failed, as he got detected as a spy; he referred to the manner it was done, and also to his influence in Jackson County; said that Westcott got the post of gate-keeper at the prison, and got a letter from Brooks to carry to Goodwin from Brooks; Fitch said that Goodwin on receiving the letter, immediately wrote him (Fitch) a letter, saying Brooks had written to have Westcott let off a while as gate keeper, to do a public service in something for the road.

He said a day or two after he went up and saw the letter of Brooks to Coodwin; that Goodwin showed him the original letter; said he came home but did not let Westeott know what he had found out;

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but thought he would see how impudent he could be; a few days after he got Champlin in his house, as he was one of the brethren he was bound to keep their secrets, and he told him about it.

Said that in presence of C.; he charged Westcott with carrying the letter to Goodwin, and being a spy; W. denied it; he told him he knew he did carry such a letter, open: Westcott then said he knew what he alluded to, it was a letter to let him go and hunt up Mrs. Fanning's trunk; he said he told Westcott it must be a valuable trunk, for them to engage him some forty days to hunt fro it, and besides it must be a great service to the public to have it found, as that was set forth in Brook's letter, and that the Centre was a poor place to look for it; he said he abused Westcott, and told him to leave.

He also spoke of the trials for burning the wood; he thought the company never would bring Corwin and the others to trial. At that or another time, spoke of Dixon; said Westcott had taken him through, and shown him the Railroad buildings in Detroit, which was the very thing he wanted; said the Company had never been able to fathom the cause of the fire; said they were not smart enough, if they would pay up pretty liberal he would show them how they could do it before their very eyes; think this was about the 18th February; think I saw him the next Tuesday again, at Filley's; Lake was with me; I first met Lake the day before at Ann Arbor, on the 24th Feb. I returned from Lansing on the 23d. I brought him to Detroit on Monday, and the next day went to Jackson with him. I saw Gay while here and he showed me two matches, they were up stairs in a bed room, on the left hand; Lake saw them the same time; they were similar to the one I saw at Filley's house.

Gay's house is up towards the barracks, between that and the water works; don't know the street it stands upon; think one of the matches I saw was one you (Van Arman) and Mr. Clark saw. I next morning went to Jackson on the cars; I employed Lake for the Company., for the same purpose I was employed; we went to Jackson and came back to Michigan Centre. Fitch was in his door and came up and came over to Filley's where he saw us stop; I had before told him I had a Mr. Lake to assist me in burning the Niles Depot. I introduced Lake to Fitch, who to show Lake his influence referred to the Goodwin and Westcott affair, and also to the driving off of Dixon the wheat buyer; said he pretended to be buying wheat for Bissel, of Detroit; that B. used to come out to keep him advised to pay 5 or 6 cents a bushel more than any body else, but he saw through it all; D. was a spy, and they started a story about tar and feathers for him, and he soon had to leave; said Dixon called him out, and asked if it would be safe for him to stay; he said if he was there to buy wheat alone, he might stay, but if he was a spy, the sooner he left the better; said if Bissel had not advised him openly to pay so much more for wheat, he should not have suspected it as a ruse; thought he would have advised him privately if it was in good faith. Heard Fitch again speak of his influence, and say they could not convict any of them for any of the offences on the railroad.

We left the Centre and went up to Leoni, and saw A. Filley, Wil-

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liams, Corwin, and E. Price there, had some talk with them; I introduced Mr. Lake as the man who was going to assist me in burning the Niles depot; they asked if I could trust him; there was a quarrel got up with Corwin and Filley about a tumbler stolen from Filley, and brought up to Leoni. Lake and these persons met as strangers: I came home, think I sent Lake to Marshall with a letter to Thielsen; I came to Detroit again the next day.

I met Erastus Smith at the Palo Alto saloon, and had a talk; he told me Fitch had left matters for the disposal of the witnesses, and also had contracted with Gay to burn the depot here again, and he (Smith) had agreed to assist Gay in doing it, as he had given him a part of the mony. I am not positive whether Smith told me this at this time, or at a previous time, when Fitch and I were here, and Smith told me Fitch had applied to him to burn the depot.

After Fitch told me about trying to get the boys away from here, I wrote a letter to this city, and the boys (Wells and Caswell) were sent to Michigan City, on the other end of the road. Laycock, soon after Fitch was here, went back to Michigan Centre, with his friends. Fitch told me he was discharged for talking with him.

I now again speak of the time I saw Smith in this city. I stayed one night and went home. Lake met me in the city, and went home with me. The next Saturday I saw Williams at Leoni; had previously introduced Lake to him, and we had agreed to meet him there that day. W. told how much he had paid towards burning the depot in this city, and said they had made arrangements to burn it again. He told Lake of his security among them as a friend, but if he turned against them that they would swear him to hell. Said he paid $20 towards burning the depot at Detroit, and would pay $40 more towards burning the new one in Detroit, and the one in Niles.

Also said he furnished the bar to throw the cars off west of Leoni, while he was a bed, to swear them clear in case of trouble; I have heard Corwin, Filley, Prices and Fitch threaten Lake, in case he exposed them; said if they didn't kill him, they would swear him to hell; this was in March; the next Tuesday saw Williams, Corwin, Freeland and Prices, at Jackson; Dr. Farnham was also there; saw Williams at Morrison's grocery, first; then saw them all at Bascom's hotel; we went in a room occupied by Doct. Farnham, for dentist work; myself, Lake and Williams were there; and W. said he wanted to swear Lake. The rule was among them, to swear them into their confidence, by agreeing if any one turned traitor to kill him; and said, "that's so, by God." Lake promised secrecy and fidelity. They then talked about various depredations which I had before heard him mention, besides saying he paid $20 towards burning the depot. To encourage Lake in anticipation of difficulty, he mentioned the Lester case, and said they swore him clear, and could swear any body else clear; said he had been once arrested for passing counterfeit money, but got clear; and he gave Lake some, and told him to pass it, and they could clear him if he got caught; said they could get hosts of witnesses to stand by them, and assist in cases of need; spoke of Fitch as the captain general of the gang, and of his

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immense influence in the county; and besides that was rich and liberal.

Said they had rather get somebody not so well known as they were to set the depots on fire, and they about there could attend to the road matter. Corwin came in after a while and spoke to Lake, to urge me to burn the depot; as he said I had been so long about it I never would get it done. I had been promising them a long time and was staving it off for Clark to return from Lansing. Corwin said the best thing he ever did, was when he came down from Leoni and they broke the chairs and run the cars off from the west; they fixed it for the eastern train, and was in hopes to kill several, but the western train came first, and it did not kill a d——d one of them. Said he had paid $12 towards burning the depot, and would pay again towards the new one. He also spoke of burning the Niles and the Detroit new depot at the same time; and thought with what they could do along there, it would bring the company to terms.

Williams said they thought of writing to the company and making a proposition that if they would pay "us" $1,000 a year for 5 years, they would let them alone. At Bascom's hotel, Fitch took me one side and asked me why I did not go on and burn the Niles depot. I told him I would go out and see how the buildings were situated, the next week; he said if they could get both ends of the road, at Niles and Detroit, on fire, at the same time, the Co. would think Miller's doctrine was coming to pass.

He asked me if I had seen a new work of internal improvement that the Dr. (Farnham) was getting up, to blow up the railroad.—Told him I had seen it, but did not comprehend how it would work. I had previously seen it on my return from Lansing 22d Feb., in an unfinished state. The Dr. told me I had better stay all night, and go up and see his machine. I did so. It was unfinished. He showed me 3 tin tubes 1 inch in diameter at one end, and one fourth inch at the other, and 16 or 18 inches long: said he, they are going to be placed in connection with powder in a magazine under the road, and by means of some kind of composition on the track, they could get fire to the magazine through the tube, when the cars passed over.—Said he had tried the composition once, but it proved too soft.

At another time, he took Lake and me up and showed the apparatus to us again. It was nearly finished then; the three tubes were joined together by a strap, and were to be spread on the track, so that if one missed the other would not. This day he told me he hadn't composition that would answer. This was on the first day of the court in March last, at Jackson. We went up to see if the trial of the boys was coming on then, for burning the wood.

Here the Court adjourned until the 25th, at 9 o'clock A. M.

TWENTIETH DAY—MORNING SESSION

WEDNESDAY, June 25.

Henry Phelps, testimony continued—The conversation last mentioned, I think was the fourth or fifth of March last, at Bascom's hotel, in Jackson. Fitch spoke of going to Lansing; and spoke of a branch road from Jackson to Adrian, which would tap the travel of

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the Central road, and that they would continue to tear up and destroy the Central road east of Jackson, until the travel would all go by the way of Adrian. Am not certain Lake, Williams and Corwinn were present; after we left Fitch, went to Dr. Farnham's house and again saw the machine before spoken of.

I saw Mr. Gunn, a def't., at Niles. In the meantime had been in Detroit on the 7th of March, and returned on the 8th. Saw Smith at the Palo Alto saloon, while in the city. Had a talk with him about the job I was going to do at Niles; he spoke of Gay and his connection with him in burning the new depot, and wanted to know if the boys, Corwin and Price, were going to be put on trial that time, I told him I had come down on purpose to let them know they were not going to be. He said he was glad of it, as they would get more time on the new depot, it would be drier and it would burn better. Mr. Lake was with me, and returned with me. I got off at Francisco's and left Lake on board. I had a talk with Smith and Van Sickles at the same time about counterfeit money. I left Lake on Saturday, and think he came to my house on the Monday following.

I think I saw Mr. Gunn the next Wednesday at Niles, when I went under the arrangement with Fitch to burn the Nles depot; I found Gunn there; Lake went with me as far as Jackson; think I got there on Tuesday evening, and saw Gunn the next day at Winterhalter's tavern; had known Gunn before; had a talk with him; and he asked if I had come out to burn the depot there; told him not then, asked me when I could do it, told him I could not tell when until I returned home; he said he had come out for the purpose of burning one of the depots at Kalamazoo or Marshall, if he could get a chance, and thought he would do it; spoke of the trial of the boys at Jackson; and said he would get Sherman in a black hole and use him so he would not be likely to get back to Jackson to appear as a witness against the boys; saw Charles White, Teilson, Thompson, Rogers, and Adair at Niles while there; I pointed out Mr. Gunn to a watchman at the Depot; sent by Thompson. Gunn said if the Niles and Detroit Depots were burned at the same time, and he should burn one in the Centre, he thought the road would begin to pay up; he was to burn one in the Centre in case he could not get Sherman out of the way; I am not positive whether Lake remained at my house or went as far as Jackson.

Gunn said he had seen Wescott there (at Niles) the day before, but he supposed Fitch had some men on his track who would take care of him; I staid two days and returned.

About a week after, I went up to Jackson and left Lake at Leoni; it was about the middle of March; I met Corwin, Grant, and Dr. Farnham—met the Dr. at Hawkin's grocery and the others at Morrison's grocery, also saw Hay and Showers there; had a general talk. I spoke with Farnham and Corwin only about my visit to Niles; told them I had been out and thought it would be very difficult to burn the depot there—still I would undertake it if all things were made right. They said at that time they had burned a culvert while I

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was gone, by putting some rails in it and setting them on fire, and it done very well. They said Fitch had gone to Lansing. They told me I must be prepared to go to Niles and fire the depot on F.'s return from Lansing, when everything would be ready. Corwin thought I had better go out again previous to burning, and see if I could not discover some good place to do it, so as to make sure; Dr. Farnham told me Fitch had been there on his way to Lansing, and left word for me to be ready to go to Niles on his return, and he would stand by me as long as grass grows. I went to Michigan Centre with Grant.

I found Showers, Filley and Lake there; me and Lake stayed all night; during the afternoon, E. and L. Champlin, Tyrrell, N. Credit and Laycock came there, and we had some talk about my journey to Niles; about the difficulties in burning.

There was an agreement then made with Filley, E. Champlin and Lake, that I should go again to Niles and make a thorough examination of the depot to be able to set it on fire on Fitch's return from Niles, they were to pay my expenses out there. The burning of the culvert was mentioned and Champlin said if we live here another year there will be more such accidents; Filley said the wind blew the fence into the culvert and the locomotive set it on fire. Laycock spoke of leaving the Company at Detroit, and said he was discharged because he was seen talking with Fitch at Johnson's Hotel, and also said it was because he would not say anything about the boys at the Centre, said he had promised them he never would say anything against them, and he never would.

I went to Leoni, and saw Williams, Geo. Hadden, and young Kirkendall there; Williams asked what I had discovered at Niles? Told him it would be very difficult to burn the depot, as the company kept a strong watch; but that some of them suggested I should go back and look about again; he said he would defray his portion of my expenses; by way of encouragement said I need not be afraid as they would all stand by me to the last. About a week after I went again to Leoni, about the 20th or 25th of March; saw Freeland and Champlin there.

Corwin was also there; I had jurt returned from Niles the second time, and told him I thought I had discovered a plan to burn the depot; Corwin said he was then going to Jackson to meet Fitch, and all things would soon be ready; he said Fitch had seen Hawkins, a candidate for judge, and he had made some pledges by which Hawkins would befriend them in case he was elected; also that they were doing all they could to defeat Johnson: had a talk with Freeland, in which he said if there was any extra expense in burning the depot, he did not mind a few dollars, for he could always raise funds out of the company; they dare not refuse him anything he wanted; that he had just made Charley White pay him $5 for damages done to a heifer; said he had paid his share for burning the depot at Detroit again, and Fitch had paid it over to a man in Detroit: also heard E. and L. Champlin say that there had been a purse raised to burn the depot again; Hawkin's prospects were a good deal talked of;

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they said they could elect him, and that he stood pledged to them in passing counterfeit money or anything else, as Fitch had informed them; Lake did not go with me to Niles the second time; I next went to Lansing about the 25th of March; think it was on Tuesday; found Fitch there; I stayed one night, part of two days; had a talk with Fitch about railroad; told him I had been to Niles the second time, any would burn the depot at Niles if he would do as he agreed; he said he would if I was successful; told him I wanted part of the funds in advance, said he would pay me some when he got home, but had not got it then; he told me on my return home, I must do all I could for the election of Hawkins—to defeat Johnson, as H. was all right; I told the defendants that I wanted to get a bill thro' the Legislature appropriating a sum of money for my relief, and found a northern member to ask leave to introduce a bill for such a purpose—I think it was Mr. Beecher; my real object in going was to see Mr. Darius Clark; I told them not to carry the relief bil any further; but I got several copies of the journals containing the notice, and circulated them about the Centre; Fitch did not come home with me; on my return, saw Corwin and Dr. Farnham at Jackson; told them I was going to Detroit; and they wished me to see Gay and Smith, and fix the time for burning both depots; the Dr. said he had his blowing-up apparatus ready to operate as soon as they began to run the evening trains; this talk was at Bascom's, I think; I saw Wm. Warner at that time; he shook hands and asked me how railroad stock was, and if it was about or above par; told him it was; when he was there the first Tuesday in March, he told me to come the next A. M., and he would repair my teeth and charge me $5, and apply it on the railroad matters.

Think I returned from Lansing about the 29th March. I met Lake at Jackson, and we went to my house. The ensuing week I came to Detroit; think it was the last day of March; think you, (Van Arman) came down the same day; I staid two days, and have before when upon the stand in May, related what occurred while here. I went home on the 2d, and returned again to this city on the 6th; have before related what occurrod while here; I came on the 2d time to see Lake, who was in the city. On the 5th, I went to Marshall, and saw Clark; on the 7th I returned to this city with you and Clark; staid until the 10th of April; have before related what happened while here; you and Clark went out on the same day. I went to Mich. Centre on the morning of the 11th April; Lake went with me; staid but a short time; saw Filley, and told him I was ready to go to Niles, and must go that day or night; Filley said Fitch had returned; I did not see him.

He told me to come up that night, and they would fit me out; Lake staid at the Centre sick; I went to Leoni, and met Corwin and Williams; I told them I was going to Niles that day, if at all; they said about dark they would go up to the Centre, and fix me out; I had seen Clark the day before, and appointed a meeting with him that afternoon at Grass Lake; told them I was going there, but would be back in time. I went to Grass Lake before the cars came, and

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Clark came on the cars; we went up to Capt. Pease's house to get supper. Told them I was going to fire the Niles depot, that night.

Mr. John Falkner, of Marshall was with Clark, but left on foot before I did; he had an axe and a small bundle, and went west; I went back to Leoni. When Myers and Corwin joined me in a buggy, I told Myers who was in the buggy with me, what I was going to do. He said in case I was successful, we would be able to draw a large sum of money from the company. He spoke of the burning of the old depot, that it was done so nicely they did not know how it was done, and we did not recieve any benefit from it."

They went on with me to the Centre; arrived after dark, and stopped at Filley's hotel, found Mr. Falkner there. Soon after we got there, H. Hay, and Lake came in, and soon after Fitch came, and by and by Wm. Hudson, came in: don't remember any one else. Fitch took me on one side and said Filley had told him that if I was going to Niles at all, I was going that evening.

I told him that was my object in coming there; he said a lot of fellows had been hanging around there, and he had sent Filley off with them fishing. I asked him for some money, he said he would not pay us anything more until after we returned, but if we succeeded in burning the depot, we might come back and take the oxen, and they would pay over the balance of $60. I know Corwin, Myers, and Falkner were in hearing of part of this talk; I spoke loud, told them I wanted them to be ready to pay me when I got back, that I was going to Minnesota; Fitch, Corwin and Lake went out of doors together, and Fitch said to Lake and me that he supposed we knew the consequences of bad faith towards them—that if we made any exposures we had better dig our graves before we went; then said he would give us a match all ready, which if we once got inside of the depot there would be no difficulty about it: said we should have to get some turpentine or camphene, and put it into the box out there, as we could not well carry it with us; said our best way was to take it in our buggy and go back to Grass Lake, and one stay there and the other go farther east and get on the morning train at different places; said the match was on the same principle as the one he had furnished Gay with, and it would not fail, as they had tried it several times; went in the house again and spoke of money, I wanted some in advance, and Corwin gave me fifty cents, saying that would help to pay for drink on the road anyhow.

A remark was made in the room that if we were successful in this and other plans they would be able to make a raise out of the company. Fitch said if you are successful, when you come back we will go to Kirkendall's and have a bust; Corwin said yes, we will tear his bar down. When we spoke of money, Fitch said it would be ready when I came back from Niles; that he had plenty of it that was not yet galvanized, but would be before I got back, and I could have plenty of it; that they would be flush when I got back.

Something was said about my claim before the Legislature; Fitch wanted to know how I got along with it; I told him I should propably get about $3000. Fitch said to Corwin we had better fix

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them off before Filley gets back with the men fishing. Corwin went to a small room, unlocked it, and brought out the match under his arm, and placed it in the buggy, and said there boys its all right; as he went out with the box nearly all hands started to follow; I got up and shut the door, and told them they could not go out; they then went out by the north door; Fitch went away before, after telling Corwin to go and get the box.

During the evening saw Falkner in the room, and heard him mentioned as some drone who had stopped there; he appeared to be stupid, and not apparently notice anything going on; Don't know but Corwin pulled him up once and made him drink.

He pretended once to be asleep; when I held the door and they went out of the north door, I then opened the west door which I was holding, and Falkner came to the door and looked out; Corwin and Myer's were near by under the shed, but came to the buggy and put the box in and said, "there boys its all right side up with care."

About two hours after, at Grass Lake, I examined the box; I met Mr. Pease and Clark there; it was the same box they put in my buggy; it contained a match similar to the one I have heretofore described; It was at Capt. Pease's house I subsequently saw the match lit. From there we proceeded on our way to Niles, according to their directions. Mr. Clark went from there with me.

On my return from Niles, I met Ammi Filley, at Jackson—Mr. Lake and yourself, and I think Mr. Clark, were with me—he met me at the depot very cordially and asked me how I got along; I told him I had set the depot on fire, but it had been discovered in time to save it; in short, that I had made a failure, and had not made nine times out of it, that I had borne my own expenses and made a failure. He told me to go to the Centre that night and the boys would be there and do what was right with me about it; I remember that I pointed him out to you, (Van Arman,) and Clark at the time; think part of the talk with him might have been heard by others.

I once heard Fitch say he had written Brooks a d——d saucy letter about the cars not stopping there, and since that they had stopped.

Fitch said Laycock knew the purse of $150 for burning the depot was raised, but did not know when or to whom it was paid; this was in this city when we were speaking of Laycock; Dr. Farnham said they never did but one good thing, and that was the burning of the depot, that they had been fooling about the matter long enough.

At the talk at Grandison Filley's, I heard Willard Champlin say he would like to have been where he could have seen the depot burn, and wished Brooks had seen it.

AFTERNOON SESSION.

Cross examined by Frink—I first came into the State in '36, and settled in Oakland County; first stopped in town of Highland; my father, mother, brother and sister came at the same time; I had a

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brother living near there—he now lives in Milford. I came from Orleans County, N. Y.; lived in Monroe County before that; think I lived in Ontario County when I was very small. I remained in Oakland County until '42 most of the time; went from there to Sylvan, in Washtenaw Connty; and stopped a few months and went to Sharon, same county. I went to Michigan Centre in 1840; that was my first acquaintance with Fitch.

On the 11th of April last, I went from here to Michigan Centre; I lived in Sylvan, Washtenaw county, I left home in the morning, with a buggy. Mr. Lake went with me. We stopped first at Mr. Cady's in Grass Lake. I went to Cady's to buy a horse, don't know Cady's given name, he lives south of the station. It was before noon I was there—staid but a short time; from there I went south and then west to Michigan Centre; dont't remember whether we went to Leoni in going to the Centre—think we got to the Centre about noon; don't know that I was at Burnett's house. Lake started with me in the morning and was with me most of the time till I got to the Centre, about noon.

[Here the prosecution exhibited a box containing a match, which he recognized as the one he got at Filley's, and which he put into the depot at Niles, which was not exhibited on the direct examination, as it was not in court at the time.—Rep.]

Got to the Centre about noon; don't remember who was there except Filley; think I did not get out of the buggy, but might have done so. Lake got out and I left him there; don't think Lake had any baggage. I went to Leoni; think I stopped once in the road to fix my buggy; arrived at Leoni about 1 to 2 P. M. Stopped first at Cuykendall's, and then at a tavern on the other side of the stream. Saw Corwin, Williams and young Cuykendall. From the Centre I took the main road I think. If I went to Leoni on my way up to the Centre in the forenoon, Lake was with me. Have no distinct recollection of being at Leoni in the forenoon; don't know how much nearer or further it would be from Cady's to the Centre, by way of Leoni; I know John Cady, but don't know the other one. (Here Mr. Frink exhibited a plat of the relative locations of Grass Lake depot, Cady's, Leoni and Michigan Centre.) Had no object in the route I took from Cady's except to go the nearest way, and don't know positively whether I went to the Centre by Leoni or the other way. I think I saw Corwin at Cuykendall's, and had a talk with him, when I came from the Centre; I did not ask him if he could secrete a man for me; presume I spoke of Lake, told him Lake was at Filley's, did not tell him Lake was up in the woods hid. I don't think I asked Corwin to go to the Centre with me, he proposed to go. I did not tell C. I wanted to find a place to hide a man; I did not at that time tell him that Lake had got into a fuss by passing counterfeit gold in Detroit, and I wanted to secrete him. I did at another time, think it was that evening; told him it was some money they had let Lake have, and he had got into trouble, and did not want they should let him have any more as bad; this was in the evening after we started to go to the Centre, about half way there, we stop-

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ped to get my buggy wrench which I had forgot and left when going up. I left it when I stopped to fix a nut on the thill; this was when I had left Lake at the Centre, and was going up to Leoni.

That night Myers was in my buggy and Corwin was in a buggy behind; he drove past me on the road where I stopped to hunt for a wrench, and stopped, asked me to come to his buggy and take a suck of whiskey: think I went, don't know who bought the whiskey. I did not ask C. to buy liquor to treat a man on the road; I did not pay for it. Don't think Lake left the buggy from Cady's to the Centre. We had nothing in the buggy; the seat was on springs—no box under it. I left Lake at the Centre, because he had fever and ague; don't think I had any dinner; think I told Mrs. Pease I had no dinner. Don't remember a law suit at Leoni that day, shouldn't wonder if there was. Corwin said if I would go down to the Centre he would go with me that evening and fix me off for Niles. I told him I was going home to get a fresh horse. I went from there to Grass Lake, and Capt. Pease got me another horse. I returned to Leoni in the evening as promised. Found Williams, Corwin, Myers, and all drank, and I paid for it. W. said he could not go down; M. and C. said they would go; the conversation was at my buggy. I think I did not offer to pay Corwin to go to the Centre with me, or ask him to buy liquor for a man I had hid in the woods, in the presence of Kirkendall, or in his bar-room. Don't know when the liquor that C. took away was bought, it was in about a half gallon jug. I saw it in Filley's soon after we got there. We staid some two hours and left together. Mr. Falkner was the only man I saw when we arrived; after a while Hay, Fitch, Lake and others come in; had not been there long before Fitch came in; don't know who spoke first. He said Filley had told him I had come that night to go to Niles &c., and that he had sent Filley off fishing with a lot of fellows who were hanging round there. I think Mr. Hudson was there during the evening.

Think I asked Fitch to take a nipper out of the jug; think Hudson drank; on asking Fitch to drink, think he did leave the house and not return again; I did not pay Corwin any thing for going to the Centre; he gave me four shillings; I did not send C. to the small room to get the match; Fitch told him to do it, and went out, and waited until we came out; I did not see him put anything in my buggy; I afterward found that box under the seat; did not see Filley that evening, saw him when there about noon; I first saw Fitch after I came out of the State Prison, in this city, in the fall of '49, at the State Fair; I saw him at the State Fair, at Ann Arbor, 1850; about the middle of January went to Fitch's with Wm. Laycock, and talked about going to buy his cattle; I don't think I told Laycock I wanted Fitch's oxen to build fence for road; told him I could make money on the oxen if I could buy them at $140; don't think I told him I could make $100 on them if I could get them for $90; don't remember distinctly what I told Laycock, as it was only intended to blind his eyes. I found Fitch in the ball-alley, and told him I would take the oxen at $120 towards the $200 for burning the Niles depot; we

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afterwards had some loud or public talk about the price of the cattle, but not in connection with the Niles affair; did not ask him to go and show me the cattle; I had seen them before; he did not say at this time he would not let me have them at any price; he told me something like this in the winter, the first time I was ever there; I don't remember that I said to him, "perhaps you think I have not the money to pay for them;" the Laycocks are distant relations to my wife; don't remember that I told Laycock I would get Fitch in the limbos, if he did not sell me the cattle.

I had no design to get Fitch into trouble; I saw he was determined to get himself into trouble, and my plan was to lay him out a little broader and bring him to justice. From circumstances which came to my knowledge, I believed his operations extended beyond Jackson county. What were the circumstances?

Gay told me that Fitch had hired him to burn the depot. I went there for another purpose; he invited me to come and take an interest in bogus money operations, and I went to find out where he kept his works. I was in the employ of the U. S. Dist. Att'y, to ferret out some bogus operations, and accidentally found Fitch's position towards the Railroad and his associates; and I communicated the facts to Mr. Bates, U. S. Dist, Att'y; I now have a copy of the letter which I wrote him, (offered to show it.)

Mr. Fitch was a witness for me when I was convicted and sent to State Prison; he was called to impeach a witness against me, and did it in the most liberal manner; he took a decided interest in my behalf; I never had an ill feeling against Fitch, and never had any difficulty with him; never knew that he tried to break up a bargain with me and Mr. Root. I know Calvin Beebe, of Jackson; is a blacksmith; don't remember of talking with him about Fitch, or saying that I would have Fitch in State Prison if I lived. I don't remember of any difficulty with Fitch while running a distillery at the Centre; always looked upon him as my best friend, and he always treated me as such.

Fitch told me he had his bogus dies in the house; showed me samples of his bogus gold and silver coins, of various sizes. This was at the barn. He took it from his pocket—showed it at my request. I saw him in Jackson the day before Christmas; the next time I saw him about the 10th Jan. at the ball alley, when Laycock went with me; I went ostensibly to buy his cattle, but to get knowledge of his bogus operations. The first time I went to Lansing, I started about 25th March; I went in, and he came along and sat beside me; think I did not first go to him and ask him to assist me in my bill to get pay for false imprisonment; spoke with him two or three times of Lansing. I first saw him at Michigan Centre, after we both came from Lansing; told him I had made a compromise with the State officers, and perhaps should get $3,000 or $4,000 out of it; don't remember of telling him I had drafts on Detroit for the amount. I was yarning it, and did not charge my mind with what I did say.—Told him I had received a letter from Gov. Ramsey, of Minnesota, to come out there; did not say a friend who graduated from the same institution I did had written me, but a friend who graduated at an

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eastern college; I referred to Gov. Ramsey; my object in telling Fitch this, was to get my pay after I returned from Niles.

I came to Detroit Feb. 12th: met Fitch at the depot; he did not enquire if Root or Choat had come in; made no enquiry for any one: don't remember telling him I came in to buy fish and pork for clearing up a very large farm, &c. I think I referred to my farm a few days before that, and said I was going to make some improvements upon it.

Cross examined by Seward.—I put the match on the second floor in the depot at Niles; left it on fire. I put some liquid turpentine in it before I fired it, as told to do, by Fitch. I put a very little quantity in, perhaps two spoonsful: I got it of Mr. Thompson, freight agent at Niles; he was present. I then applied a match to it in the office; this was about 10 P. M.; think it was out of the box when I fired it in the office, to try it; I put the fire out again, and took it to the depot; Lake went with me, it was soon afterward; took it to the second floor, fired it and left it. Don't know who put it out. Mr. Thompson was notified to have somebody to put it out; he knew I was going there with it. I slept at the American Hotel; Clark said he staid there also. I saw him the next morning. I next saw the machine in this city. Mr. Clark did not return with me. I think I next saw him on the Monday following.

I lived in the town of Wheatland, in Monroe county, N. Y., from 1820 to 1832 or 3; am 37 years old; from there I went six miles south of Knowlesville, Orleans county; left there in '35 or '36; am a farmer, once worked at the cooper's trade. I farmed it on my own account in Oakland County, until the death of my mother, some two years; from there I went to Milford and aided my brother in carrying on a distillery, saw-mill and farm; in the fall of '40 I went to Michigan Centre and carried on a distillery, and went back again to Milford; in the spring went to Sylvan, after that to Sharon.

I was sentenced to Jackson in the fall of 1844, on charge of horse stealing, was sentenced for five years.

At the prison I was put to manufacturing business, at warping cloth dressing, weaving and various kinds of business. I became acquainted with Lake in the same department in the prison; think he was charged with aiding prisoners to escape; I left him in the prison; did not know when his time there expired; I first met him out of the prison about a year ago, in Dexter. I retained a farm while in prison; have a family; was married in '41 or '42; while I was in prison my wife staid with her folks in Sylvan. The 2d time I saw Lake was in Bedford, in this county, about February last; did not see nor hear from him from the time I saw him in Dexter, till February; think I wrote him a letter to come and help in my harvest, but he did not come, and I did not hear from him.

The Court adjourned until to-morrow morning at 9 o'clock.

TWENTY-FIRST DAY—MORNING SESSION.

THURSDAY, June 26.

Henry Phelps' cross ex. continued—by Seward. I was pardoned from State prison in April, 1849, and went into the employ of U. S.

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District Attorny some 15 or 18 months afterwards; had before seen Mr. Knox, U. S Marshal; think I commenced for Mr. Bates in Nov. 1850. I was to find where certain bogus tools were kept; I was to have $1 25 per day, and they paid some traveling fees. When I commenced for the R. R. company, I was to have $40 per month; the engagement has never been revoked. Before I went to prison I had sometimes pettifogged suits before justices, and perhaps assisted in appealing them to higher courts. Never had anything to do with making, dealing in, or passing counterfeit money before I went to prison. Were you ever legally charged with such things? Was not. Was you ever suspected of it? Objected to, and objection sustained; excepted to. At one time in '38 or '39 I had an affection of the lungs which rendered me nearly speechless, could be heard only with much difficulty; the attack lasted several months. I did not at any time while in Oakland county affect to be dumb or suppress my speech. Never had a very intimate aquaintance with Joe Dows. Never saw in or about the prison at Jackson any machine or contrivance for burning buildings. Never had any knowledge of such a thing about the prison; thind Mr. Titus told me a convict named Houghton, had made a brass cannon, which he wanted him to tade to Washington and get patented. Don't know that I ever had any definite description of the machine or cannon. I knew a colored man named Gough at the prison. Never had any communication with him on the subject of such an invention. Think I had no talk with Lake while in the prison about dealing in counterfeit money after we left; had no conversation with Lake in prison about burning buildings after we came out; a portion of the time in the prison we were on good terms, but for the last 18 months did not speak together; he never told me in prison that he had been dealing in counterfeit money; he said he never had committed a crime.

Think the morning me and Wm. Laycock went to Fitch,s it rained; stayed at one of the Laycocks the night before; don't remember which one; don't know whether I went on foot or with horse; think Minor Laycock and two or three others might have went with me; can't be positive which of the Laycocks. Think I have rode with two or more of them on a load of wheat, but can't say whether it was that morning; think I rode down with two or three of them (the Laycocks) at one time, and some of them left the load with me at the school house and went to Filley's, the load went on to the mill. I went from Filley's to Fitch's house, to talk of oxen; no one went with me; might have went to the mill; don,t remember whether I rode back to Laycock's or not to dinner.

A plan was suggested to me by Corwin, Price, Williams and Freeand, at Leoni. about 10th of January, to dispose of Laycock, who at athat time was suspected of being a spy. Williams said he had plan to swear that Laycock throw the cars off at the time Woliver and others did. Williams was going to swear Laycock said he would do it; Freeland was going to swear that he had told him he was going to do it, and afterwards that he had done it, and Corwin would swear that he came and tried to get him to help do it; and af-

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ter that he told him he had done it himself. Their plans were all similar; don't remember that Price said what he would swear to. This conversation was at Kirkendall's tavern in Leoni.

I knew Corwin and Price before the Christmas day that I went to the Centre. At that time Filley first spoke to me about the burning of the depot. I might have said something to induce his confidence; think I asked him for some counterfeit money, then commenced talking of the road; he asked me if I had not been talking with Fitch, and asked if I was going to accept Fitch's proposition. I told him I thought I would if I could get Fitch's oxen; don't know what I told them I was going to do with the cattle; probably invented some story for the time being; might have said I wanted them for my farm. I thinkthe talk with Filley about burning was in the forenoon, in the bar room, he first spoke of the match in ball alley, at a later hour in the day; think I expressed my fears about its working well.

Think he told me it was got up there, and I said the man who invented it ought to have a patent. What I told Corwin going to the Centre about Lake being in difficulty about passing counterfeit, was all false.

Filley said he paid $30 towards burning the depot in Detroit; Corwin said he paid $12; Williams said he paid $20, and the others as before stated.

Corwin told me at Jackson,and Freeland told me at Leoni, about the 10th of January. Think Dr. Farnham first told me about his invention at Bascom's tavern, where he fixed my teeth; think he fixed my wife's teeth in the fore part of February. When I fired the Niles Depot, I went west on Sunday evening to New Buffalo, and staid over night, and returned on the Monday morning train; came to Jackson that day; met Van Arman at Marshall--fired the Depot on Saturday night.

When I met Fitch at the Depot in Detroit, it was about 8 P. M., on the arrival of the western train; it was on the 12th February. We went to the trunk table and sat down and had a talk; saw a Mr. Doan there—the only person that I knew at that time in the depot. Fitch spoke of the witnesses here, and suggested two plans to get rid of them: told him I would see him next day, and we would fix upon some plan to lay them out. I did see him the next day and told him that I thought the counterfeit money plan the best one. The money in the small cases or cylinder was entirely new to me. I came ostensibly to help Fitch.

Offered to carry the money to the man; think I told him I would get a man named Rose, at Royal Oak, to figure with the boys, and get the counterfeit money into their pockets; had been to Royal Oak that morning to see how Rose stood connected with Joe Dows, in the forging business at Pittsburgh.

While I was gone, Fitch told me he had seen Gay, and he offered to take the job of burning cheaper than I had, and he had partially closed a bargain with him to do it; if the burning was done it was to be laid to the witnesses, (Caswell, Wells and Laycox,) and the counterfeit money operation was to be abandoned. Fitch said he

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had left two matches with Gay, and paid him $50 towards the job. At another time Eitch spoke of the woman at Gay's who was to assist in getting the money into the boys' pockets; Fitch said the woman had been living at the Centre, as I inferred at Filley's; he did not say who the woman was.

Knew Gay when I first came to the State, he was a mason by trade, at Pontiac; he kept a house of ill fame in this city last winter; have heard he has been in State prison; he told me he had got $50 counterfeit money of Fitch, which he showed me, and Fitch also said he gave it to him.

I never gave Lake any counterfeit, he once gave me a $5 counterfeit bill, which he received of Williams. The woman Fitch spoke of, he said was to stay at Gay's, and assist in seducing the boys; don't know whether she was a married woman; don't know her name.

On Monday night last staid at Wm. Shaw's hotel, was out part of the evening, and think I was at Clark's room at the Exchange; don't remember how long I staid, but think till 10 or 11 o'clock; the memorandum of my testimony was there, and I think Stewart or Van Arman looked it over; have made memorandums of my knowledge of facts as they occurred, and given them to Mr. Clark.

On Tuesday evening was at the Exchange, and went home to Shaw's hotel.

"Did you meet with any accident that night?"

Objected to, unless the prosecution were allowed to go into all the facts, which would show that this witness was shot at while going home that night, and would also prove that he had before been attacked during this trial with brick bats, and also would show some facts about the room at the Exchange, where he was that evening, being watched, &c. They were ready to substantiate the truth of the witness' statements about this matter of shooting, and brickbats, but if the case was opened the whole of the facts must be gone into.

I showed my coat yesterday, and pointed out a mark made by a bullet shot at me the night previous, along the chain fence, near Ladue's sign, (on Campus Martius.)

Have heard Corwin, Fitch, Filley, and Williams say that a witness might go before a grand jury against them, but would never live to appear before a petit jury. Don't remember calling the attention of Mr. Eldred to the mark on my coat in the street; don't know Mr. Eldred; he might have seen it while I was talking with somebody else.

I talked with Price about his being indicted for burning the wood; he said he could get along well enough with it, if it were not for Sherman, Westcott and Spaulding; did not tell him Spaulding could be impeached, think I told him I could get some one to impeach Sherman, in my neighborhood—told him this to deceive him, did not mean it; it was at the ball alley; did not ask them why they did not tear up the track and raise the devil with the road.

I told Fitch that Laycock had made an affidavit in Detroit against them—don't remember that I told them that Lemn had made an affidavit against them, think I told them to look out for Lemn; might have told them he was a d——d mean man, but don't remember it.

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Think it was true that Laycock had made an affidavit against them; think Westcott told me of it. Did not know Westcott until I came to this city.

When the machine was shown me at the Centre, I told them I had seen one like it at Gay's; saw it at Gay's house on the night of the 24th of February, in a small bedroom, on the left hand, up the first flight of stairs; there were two of them, and I think one of them is one of those now in court, it was the round one, and the one not fired.

Saw Gay eight or ten days before, when Fitch was here, at Savanack's grocery. About the 8th of April showed me one of the same ones again in the same room; since the arrests have examined the side-walk in front of Gay's house, and found several apertures large enough to contain such a box as contained the matches. The others who were with me, found a match under the walk.

On different occasions Corwin said the cars should not pass for three months at a time without paying homage to Michigan Centre; Penfield told Laycock he would swear the pistols were not loaded when Fitch handed them out to them; my wife was not with me that day; it was at Palmer's dinner table; think some of P's family were present; I met Lang and Wakeman in the ball-alley in January; it was Williams who said they were preparing to give Detroit another touch; Miner Laycock is a distant relative to my wife—I thing second cousin; John Palmer married a cousin to my wife; I had a farm of about 200 acres before I sold it; have been working for my wife's father's for a year or two; when Fitch came out, I got on the cars at Dexter and went to Francisco's, talked all the while with Fitch; saw Van Arman some ten years ago, but had no particular acquaintance with him; consulted with him before I went to Niles; told him what the plan was, and he told me to carry it out; think he went to Niles with me and returned on Sunday; I next met him at Marshall, on my return next day, and he came down to Jackson; when Williams proposed to swear Lake at Jackson, I recommended him as a trusty man; there was no formal oath administered, but he said the rule among them was that if ever any one came out and exposed them, they would kill him, "that's so by God;" Fitch asked me one time what I thought of the Dr's. machine; I told him I had seen it, but did not fully comprehend how it would work; the Dr. never got the teeth for my wife prepared, before the arrest; don't remember what he called them worth.

I became acquainted with Gunn at the Centre, in January or February; said he had been running on the road. Freeland, Williams, Corwin, Filley, and Farnham, all spoke about paying my expenses to go a second time to Niles to ascertain a good plan for getting the match into the depot. Williams said he would pay $5 towards it as he had just got that amount from the Co. for damage to a heifer.

Quite a number of "State Journals" were addressed from Lansing to those about the Centre, I suppose they were mailed by my friends, Senators Danforth, Pierce, Clark, &c.

I think I first formed the acquaintance of the Gov. of Minnesota in

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Philadelphia or at Saratoga Springs, some ten or twelve years ago. I opened the correspondence with Gov. Ramsey last winter, he wrote me one letter and sent me some printed documents.

By Frink.—I know Michael Coy; I was present at a portion of the arrests and came in on the cars; saw him on the cars, and he told me he was not arrested. I did not tell him I would pay him to testify against Fitch, and that he could have any situation he wanted if he would do so. I did not use that language; I might have said that in substance; I remember exactly what I did say; Coy said he knew some things against the men; he had before applied to me to get him carried down to Detroit and back free; he had been arrested and discharged. I told him if he knew anything that he could swear to they would probably bring him down free.

Don't know Geo. Lynx and Andrew Barney; don't remember that I talked with anybody and tried to hire them to swear that Lemn fired the depot; never have charged him with firing the depot.

I know Bildad Bennett, of Leoni; think I was talking with him about getting Burnett indicted for moving the switch at Jackson. Did not tell him that I wanted to hire him to swear against Burnett, Williams, Fitch or the others.

AFTERNOON SESSION.

Phelps Cross Examination continued.—Did you offer Andrew Barney $200 to swear against Fitch?

Don't know any such man.

Did you make such an offer to Geo. Lynx?

Never did.

By Hewett.—Saw Mr. Gunn at Michigan Centre, in January, and several times afterward, before I saw him at Niles, in March. He lived at the Centre and at Leoni until he borrowed a suit of clothes to run away with. Think I saw him at the Centre the day Fitch showed me the match last January. Lang, Moulton and Fitch were there—this was the first time I saw him there, and think he was tending bar for Filley. When I saw him at Niles he said he came out to burn a depot at Kalamazoo or some other place, if he could bring it about. Said he meant to get Sherman in the black hole, and if he did he never would appear against the boys at Jackson. Asked me if I was out to burn Niles depot; told him I was out like him on an exploring expedition to see what could be done.

Saw Smith at the ball alley, opposite the Railroad Hotel about 10th December; don't think he was engaged as game keeper; think Gay, Van Houghton and Van Sickles were there; think Chas. Hoag kept the alley, and perhaps was there; think I did not testify in U. S. Court room on trial of Van Houghton, that I was there on that occasion from two to six o'clock P. M; saw Smith next morning, and asked him to go out to Van Sickles, with me, and offered to bear his expenses; my object was to get introduced into the bogus factory; he said he had been there before, and going out, and he knew the way.

We were coming down the avenue from Gay's when Smith told me that Gay had given him a part of the money for burning the de-

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pot. After going out to Salem to see Van Sickles, I next saw Smith to talk with him, about the 12th or 13th February, while Fitch was in town; saw him near the Palo Alto Saloon, at a grocery; think I had written him letters, but not to become a witness against any of these defendants—did not write him or try to hire him to go out and get acquainted with defendants, so as to swear against them; did not offer to hire him to swear that Lemn had burnt the depot; did not offer to hire a girl to stay in Smith's family while he was gone. He wanted to buy a piece of property of me, and it was about that matter that the letters were written.

I went to Indiana last fall, with a Mr. Clark, who had a pair of horses stolen, to hunt for them. I was at the "Tamaracks"—objections were made to this testimony—unless the witness have leave to explain the whole matter.

Direct examination resumed by Van Arman.—Was sent to State Prison five years, but was subsequently pardoned out by Governor Ransom.

When Fitch was here he expressed a desire to have the depot burnt and lay it to the supposed witnesses, Laycock, Wells and Caswell, and if this could not be done, to place counterfeit money in their pockets.

You spoke on cross examination about being shot at in the street Tuesday night, state how it was. Objected to by defence.

Van Arman said the defence were extremely sensative on this subject, since they find we are ready to meet them on the subject.

Question.—How long was you at Mr. Clark's room at the Exchange Tuesday night? Until 11 or 12 o'clock, the room is on the lower floor. Somebody came and peeped through the window once or twice during the evening, who were apparently watching those inside. Spaulding, Wood and several others were there, and went out to see who was hanging about there.

Mr. Van Arman here said he had wished to avoid all allusion to the subject of this shooting matter, before this jury, but as the defence had sought to take advantage of the matter by asking a few questions, he now wished to go into a full examination of the subject, and they were ready to corroborate his statements by several witnesses—to prove that the witness was dogged from the Exchange to the place where he was shot at and hit, about midnight, on his way home &c. &c. Said it looked strange that the counsel for defence should flounder so when the prosecution was ready to prove that this witness was actually followed and shot at, at the dead of night, and also that he has before been attacked with brick bats, at the dead of night, since this trial commenced.

Witness.—I told several persons yesterday that a pistol was fired at me Tuesday night on my way home—the statement was strictly true, somebody did fire at me.

Here a long argument ensued among counsel. Defence having objected to hear anything more on this subject, on the ground they had not drawn it out on the cross examination.

The Court admits a full relation of the facts connected with the

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shooting, on the ground that the defence opened the subject by their questions. The decision was excepted to by defence.

Witness.—I came out of the Exchange about 11 P. M., going up Woodward avenue, and a person came up behind me, as I got near the chain fence going across Campus Martius, he passed me, and fired at me, I jumped off the side walk and partly fell, while I was recovering I think a second shot was fired, I was a good deal frightened, and halloed two or three times. I ran across the street; the first fire the bullet struck my side and arm; I felt the shock very sensibly, and my arm was black and blue the next morning—the ball passed between the body and the arm and touched both.

When Smith spoke of having part of the money paid for burning the depot, he said he had got a part of Gay, kept the balance himself.

What were the grounds upon which the application for your pardon was based?

Objected to by Seward—objection overruled. Decision excepted to.

Witness.—It was upon the ground of my innocence—my discharge was predicated on the ground of innocence.

Was the witness on whose statement you was convicted, afterwards indicted and convicted of perjury?

Objected to—objection sustained.

Witness.—My object in carrying out the plan of burning the Niles Depot, was to retain the confidence of the defendants, and elicit further evidence of their plans and operations. I did it at the suggestion and with the full knowledge of agents of the road. It was said that if I did it and the attempt failed, it would be announced in the newspapers, when I was to go back to the Centre, and see what effect it had upon them, and it was thought it would give greater confidence in me. It was to be published as an attempt of an incendiary.

By a Juror.—I was to have a given sum from defendants, if my attempt to burn the Niles depot was successful; if not they were to do what was right about it.

Williams and Freeland paid me $5 each; Filley gave me $10, as he said for himself and Price, and had received some before; think we received about $60 in all, before and after the attempt. I handed it all over to Mr. Howe, the treasurer of the road, or to Mr. Clark, agent of the road; that I received before the attempt I gave to Mr. White, the paymaster on the road, that after to Mr. Howe. The four shillings Corwin gave before going to Niles, I handed over to Clark. All I received from them I paid over to the company.

Fitch paid me some at Bascom's hotel in Jackson, on the first day of court; he paid me eight half-dollars, two gold dollars, and one twenty shilling piece.

[A portion of the cross-examination of this witness is omitted, but only such portion as was a literal repetition of that given on the direct examination.]

H. L. Spaulding, recalled.—By Van Arman.—I remember the attempt to burn the Niles depot. You and Clark came down on the Monday train to Jackson. I saw Filley at the Jackson depot, wait-

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ing for the cars from the west. When they arrived, Phelps stepped off and Filley approached him and talked privately with him while the cars stopped. Saw Van Arman and Clark step off and stand near where Filley and Phelps were talking.

J. Van Arman recalled.—On the day Mr. Phelps returned from Niles, I came and got on the cars at Marshall; found Phelps; Clark was with me: we all came together to Jackson; as soon as the cars stopped at Jackson, I saw a stranger approach the cars; I have since learned that it was Mr. Ammi Filley; Phelps told me so then. He met Phelps near the car, and talked; I stood near where they were; heard Filley ask Phelps how he got along out there. P's reply was low and I did not hear it, except the last of it, which was that it was a failure, and he didn't more than nine times. There was other low talk, when P. spoke of leaving the cars, and Filley said P. had better go right down to the Centre, as the boys were there waiting for him. Phelps did not get on the cars again. Mr. Filley got on and rode to the Centre; it was the first time I ever saw him to know him.

Cross-examined by Seward.—Don't know where P. got on the cars that day; I first saw him in the depot after the cars arrived, as I think, but I am not positive that I saw him until I got on the cars, and they started: Phelps and I had been in conversation going to Jackson, I presume, though I don't remember distinctly what it was. As the cars got to Jackson, I stood with Phelps on the platform or steps of the cars; he said "there comes old Filley." P. stepped off and talked with Filley; I stood as near as I dared, to hear what they were talking about. I listened to them, but kept my head turned the other way. I heard no good of myself at that time. I am counsel for the people; was retained by Mr. J. W. Brooks, one of the people. I was also retained by Mr. Clark, to assist him, about December last. I am now acting by virtue of being retained as above.

Do you know when this cause was commenced?

By the court.—Can you tell when it will end? (Laughter.)

Witness—This cause was commenced, I think, in April. I became acquainted some with Phelps before he went to prison. Don't know that I ever saw Lake, until he came to my office on this business in February or March.

Here the Pros. Att'y announced that they should recall Phelps again in the morning, as to one point overlooked.

Court adjourned till to-morrow morning at 9 o'clock.

TWENTY-SECOND DAY—MORNING SESSION.

FRIDAY, June 27.

Darius Clark, recalled—I was at Lansing last winter, as member of the Legislature; saw Abel F. Fitch there two or three weeks; saw Henry Phelps there about two days while Fitch was there; P. was there twice; saw Phelps and Fitch together in the bar of the house; the next morning after P. arrived, they were sitting together talking over an hour, and one for fifteen or twenty minutes. I was at Niles when the depot was fired: Phelps went from there to Mich.

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City the next afternoon. I saw him again the next Monday about noon at Marshall depot, when the western train came in ; I came with him to Jackson ; I knew Ami Filley at that time, and saw him and Phelps talking near the cars after they stopped at Jackson; Van Arman was present ; I came to Detroit ; Filley went as far as the Centre; I saw several people there: Phelps stopped at Jackson; Filleys manner towards Phelps, when he met him at the cars, was cordial. I employed Phelps to ferret out the aggressions on the road.

Objected to by Seward.

Van Arman said he wished to show by this witness that at the time he employed Phelps, he gave him directions how to proceed, without disclosing to him any knowledge before obtained of the depredators.

Objection sustained.

Witness—I was present at the arrest of the defendants, and came in on the cars with them; saw Fitch. Warner asked who this Mr. Phelps was who made the complaint ; said he did not know him ; Fitch replied he did not know him neither. I saw Van Arman sitting with Fitch part of the time coming in.

Cross ex. by Seward—Think Warner asked who the Phelps was, named in the warrant, who made the complaint. The name of Gay was also in the warrant as one of the defendants. There were others sitting near, but don't know who they were. Mr. Thompson, one or two of his men and myself extinguished the fire at Niles depot when Phelps left the match; Thompson was depot master. We knew Phelps was going to leave the match and had made ample preparations to put out the fire; Phelps knew we were going to put out the fire ; it was all understood. Saw Dr. Hahan on the cars the morning after the arrest ; don't know whether he heard the remark of Warner and Fitch.

By Frink—I went to Gay's house with Van Arman more than once—once between the 5th and 10th of April. Phelps went with us; he introdced us to Gay as black-legs, and hard cases ; we assumed that character, and went two evenings in succession. I professed to hail from Illinois, and to have been successful in some enterprise, and pretended to be on something of a bender.

Don't think I heard Fitch say, on the cars, that he was acquainted with Phelps; Warner had the warrant in his hand, and was sitting near Fitch with it.

H. L. Spaulding recalled—Mr Frink objected to recalling a witness, on the examination in chief, but waived his objection, and the prosecution also waived the examination, as the point had been referred to by witnesses.

Charles White affirmed ; ex. by Van Arman—Reside at Detroit: know some of the people of Mich. Centre; had charge of building Railroad fence along the road in Jackson Co.; the fence along near Fitch's, in Mich. Centre, was taken down, and the rails piled up ; I asked Fitch how the fence came to be taken down, and he said Mr. Barrett, as Path-master, had ordered the fence down, because it was in the street; there was no street worked or traveled at that place. I

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sent Spaulding up to find where the citizens there would allow me to build a fence; I had talked with Fitch and Filley about the fence, and they consented to have a fence built this side of the village; materials were carried there for the purpose, but burned up; the fence was not built.

I remember Fitch's being in this city last winter, in February; saw Phelps here at the same time; remember the morning Phelps left on the cars, west; I saw him and Fitch together at the depot before he left, in conversation, until the cars started; saw them two or three times together that morning talking privately.

Think Fitch took Phelps by the hand as they parted.

Saw them together again 18th of February, on the cars, west of Dexter, going west; they talked together in a private manner, until Phelps got off at Francisco's; think the car might have been half full; don't remember of seeing them together on any other occasion.

Cross Examination, by Seward—The car held about 60 passengers, and two on a seat; Fitch was on one seat and Phelps on another; Fitch had to turn round to talk to Phelps; Fitch got on the cars at Ann Arbor and Phelps at Dexter; think Fitch retained the same seat after Phelps came in.

John Falkner sworn, by Van Arman—Reside at Marshall; been there seven years; am cartman; own a team; remember on the 11th April last, going to Mich. Centre; left Marshall on the cars, got off at Grass Lake, and went back to the Centre on foot; at Grass Lake saw Mr. Clark, the only man I knew; I had an axe and small budget with me; when I arrived at the Centre I stopped at Ami Filley's tavern; Filley was not there; Mrs. F. and a girl they called Bridget and a boy and a Mr. Lockwood were there; L. soon left. I asked for supper and lodging; while at supper, Phelps, Lake, and a man they called Wm. Corwin; and Daniel Myers came into the bar-room; found them there when I went out.

When I first went into the bar-room they were talking low together; could only once in a while hear a word; heard these words from Corwin, "yes after we get through;" and "think we can come it." After they got through they went to the fire-place, and Phelps said loudly, "boys, when I get back from Niles, we will have a time." Corwin replied, "yes, we will, we will tear down Kirkendall's bar, and this too;" something was said about pay; Corwin said, "I am willing to pay something in advance," and took out his wallet and gave him something. Phelps remarked, "this will help pay expenses over the road, all paid in advance helps like hell."

They continued to talk, and went out doors, and soon after came back with two others, whom they called Hudson and "Hi. Hay." They talked privately; soon a man came in they called "Capt. Fitch;" it is the same one here now; he said, "boys, how do you do?" and shook hands with Phelps; asked what's the news. Phelps replied about as usual. He then went round from one to another asking, "what's the news." He asked Bill Corwin three several times, "what's the news?" they all went out doors; were gone about five minutes, and came in again; Phelps and Capt. Fitch stood by the

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counter alone; the rest sat down on a bench. Heard Fitch say to Phelps, " when you get back, I shall be ready, I shall be flush then." Before Fitch came in, Corwin said it should be right, and money would be flush: this was the time when Phelps spoke of when he would get back from Niles.

Soon after, they all went out again, and I moved the light from the bar counter to the mantle-piece; Corwin, Phelps, Hay and Hudson or Meyers came in again in a short time; Corwin unlocked a door leading to a small room, and went in the dark; he brought out a small box five or six by ten or twelve inches in size; in locking the door he had to use both hands, and the box slid down, but he caught it before it struck the floor, he then locked the door and put the key in his pocket; Corwin then passed out doors with the box, and Phelps got up and shut the outside door and put his back against it, saying no one could go out, the others then went out a side door, and Phelps then opened the one he was holding, and went out and left it open; I looked out and saw Corwin and Myers under a shed near by; very soon they came from the shed and put the small box Corwin carried out under the seat in a one horse wagon standing near by; Lake came from the shed also; Corwin went to another wagon, and untied the horse; Lake went to the wagon where the box was, and called Corwin, and asked is " that all right?" Corwin answered " yes." Lake and Phelps got into one wagon, and Corwin and Myers into the other, and they drove off, that was the last I saw of them, they were about there some two hours; I saw nothing else put into the wagon; saw a jug of whiskey, but don't know what was done with it.

They asked Capt. Fitch to drink, but he refused, saying it gave him a pain in the side. Corwin told him he need not fear it, as he had paid for it. Fitch stood on the opposite side of the wagon when they put the box in. There was something said about going to Lansing. When they talked, they generally stood close together, and spoke low, so I only heard a part of the conversation.

[Here a box containing the match placed in the Niles Depot, was exhibited to the witness, and he recognized it as the one, or exactly similar to the one Corwin took out of the room and put in the wagon.]

I saw the same box the next day at Bank's office in Marshall; I staid that night at Filley's; they looked at me pretty close occasionally, but said nothing; I sat about, appearing not to notice what was going on; think Phelps called me stranger once, and asked me to drink, I looked up and shook my head; Corwin afterwards urged me to drink, and I did. I saw Filley after they had gone; he came in from out doors; I stayed up stairs, lay down with my clothes on; was dressed with sheeps gray pants, brown vest, a Jean coat, and cloth cap—on the whole dressed rather shabbily. I paid good attention to what was going on, as I went there for that express purpose. I left early in the morning, and think a man followed me; I was afterwards satisfied I was followed; I saw H. Hay on horse back as I was going into Jackson, and from his manner thought he was following and watching me; he reined up when he came close to me. While I was in the bar room at Filley's I

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pretended to be asleep part of the time; I believe they thought I was, but I was wide awake; when Corwin opened the door he took the key from his pocket.

Cross examined by Frink—It was about eight when I got to Filley's and perhaps half an hour after when I came out from supper. I saw Corwin give Phelps something which I supposed was money; did not hear Phelps ask Corwin for money to pay his bill; Corwin and Phelps stood close together at the counter; there was no one in the bar; others were about the room. Think Hudson mingled in the conversation, and went out doors on both occasions; also Fitch; they all went out about the same time; Lake complained of being sick, and did not say much; I was in the room when Corwin gave Phelps money. When Fitch came in he shook hands with Phelps; he next spoke to Corwin, and asked, "Bill, what's the news;" think no one left the room immediately after Fitch was asked to drink. Am sure Fitch came back into the room after he first went out; he was about there some half or three quarters of an hour until the teams went off; think it was past nine when he first came in; don't remember any others coming in that evening but those named. It was dark when I got there; did not see Lake until after supper; Corwin came in from out doors when he unlocked the small door; Phelps followed him in. I saw the box as he brought it out under his arm. Phelps, Myers, Hay or Hudson were in the room when he brought it out. Phelps and Lake did not go back into the room after the box was put into the wagon; the two wagons started off at the same time in the same direction; Phelps did not go to the buggy with Corwin when he put the box in ; don't know they were together at the buggy after it was put in; had no conversation after it was put in; did not see the jug after they left; never had seen any of these men before.

By Seward—I expected to see Phelps there that night; I was told he might probably be there; I did not know Lake ; I expected to see somebody there. The reason I did not sleep was because I thought I had got into rather a hard place; expected to, but thought it was harder than I had expected. I went there to see what I could see and hear, and kept awake, because I did not know as the play was all over. There was a candle in the bar room when I came out from supper, and when I first saw Lake and the others sitting there. The night was rather cool. I expected to see a box or bundle delivered to Phelps that night, and had been told something would be done similar to what occurred; had I not been watching, might not have noticed what was going on, or thought strange of it. Heard Fitch say to Phelps he would be ready when he returned: that he would be flush then. Corwin said he was willing to pay something in advance, and handed him something, saying it would be all right, and they would be flush when he got back from Niles.

There was no one about to wait on them in the bar room; they had liquor in their hands in a jug, and drank as often as they chose. A man came in who I took to be the landlord, and lighted me to bed. I left after daylight, and saw Hay when I was going into Jackson. I next saw Phelps that day on the cars west of Jackson, going west. I went to Marshall and passed a few words with him on the cars, also

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with Clark. I had laid aside part of my disguise at this time; I gave a written statement of what I saw and heard, that afternoon, to Mr. Van Arman. Phelps was not present; I did not swear to it; have never seen it since to read it; no one since that day has ever conversed with me about what I was going to swear to here.

By a juror—When Hay came up towards me in the morning near Jackson, he hitched his horse; was a long time hitching his horse, and then came a few rods towards me, and turned back, got on his horse and rode off; his actions induced me to believe he was watching me.

Alanson Sheley sworn—Reside in this city; know Phelps, who was sworn here; know Fitch; did not know him before his arrest; last winter I was at Johnson's Hotel; saw no one I knew; a man was walking back and forth at the tavern; soon saw a man coming from the depot, rather shabbily dressed; the man whom I saw walking back and forth stepped out and met him, shook hands with him and asked him if he was here yet; the man who came from the depot looked loaferish and muddy, as though he had been out traveling somewhere. The other one, from the hotel, was a well dressed, gentlemanly looking man; the well dressed one was taller than the other. When Phelps told his story before the grand jury, I remembered the conversation and circumstances, and I went up to the jail to see if I could recognize Fitch; after a little I saw a man among the prisoners who I thought was the same I saw near the depot; I was told this man was Fitch; I think the man I saw at the depot was rather taller than Fitch is, but his face looks like the one I saw there; the other man was about Phelps' size, but I think looked a little thicker than Phelps; can't now say it was Phelps; it was in the spring I saw them.

Mr. Seward noted an exception to the reception of the testimony, on the ground that the persons were not identified.

Witness—The well dressed man asked the other if he had not gone yet, and the other said he had not yet got his fish, and asked if he knew where he could get them; the well dressed man said "round there," pointing towards the dock and warehouse; I thought at the time that the man need not be in such a hurry, as it was too late to get them on the cars; I left them talking, and heard this conversation as I passed them; I never told of this or thought of it afterwards, until Phelps appeared before the grand jury, which brought the subject to my memory; I was a member of the grand jury; I think the shabby dressed man had his pantaloons in the tops of his boots; wore a cap and I think had an overcoat.

Mr. Seward noted an exception to the reception of the evidence: that witness had not mentioned what he saw till he heard Phelps before the grand jury.

Cross examination waived.

The court took a recess for an hour.

AFTERNOON SESSION.

Geo. V. N. Lothrop sworn—by Van Arman—Was Attorney General of the State from April, 1848, to last January; had something to do with the prosecution of one Lester, in Jackson county, for depredations upon the rail road in 1849.

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Testimony objected to by Seward:

1. The prosecution have closed their case touching this branch of it.
2. What Fitch did in the Lester suit is irrevelant.

Argued briefly by Fraser, Seward and Frink.

Objection sustained.

Witness—Have heard Fitch speak of sending hand-bills warning the public not to come over the road; heard him say to the effect that if the company did not accede to their terms, to pay their prices, &c., that they would take measures, by sending hand-bills and agents to New York and other places, to tell the public that it was extremely dangerous to pass over the road, on account of obstructions being frequently put on the road. At the Lester trial some of the defendants were sworn as witnesses; I frequently talked with Fitch about the depredations, and he frequently intimated the above course as the one they should pursue, if the company did not come to terms. Never heard him say he would obstruct the road or procure its being done; but that if the company killed cattle and did not come to their terms, that such things, referring to obstructions, might be expected, and people were not to blame for doing it; heard Burnett speak against the road with considerable feeling, attributing the blame to the company; talked with several of them, included a committee, and explained the consequences of the lawless course heretofore pursued, and advised a resort to legal means to redress their wrongs; they justified their course, by saying they would stand no chance with the company in a law suit, and therefore the only means left was to take the matter into their own hands, and annoy the road until the company would accede to their terms; Burnett never said he had or would obstruct the road; I saw Burnett once after at Jackson, and once at Grass Lake.

Cross examination, by Seward—The first time I went out on this business I went in my official capacity; I heard there was to be a rail-road meeting at Jackson; did not find a meeting, but Messrs. Fitch, Burnett and one other met me as a committee on the subject; think they called the meeting; I told them they had a remedy at law for the wrongs they sustained; they replied, a poor man would have no chance in a law suit with the company; we were talking of the depredations on the road, throwing off cars, &c.; Fitch spoke with much feeling, and appeared to justify the depredations, by saying such things would happen if the company did not do so and so.

Daniel C. Pettis sworn—Reside in Detroit; am superintendent of the locomotive department of M. C. R. R. Co.; I know Mr. Joy of Jackson.

Question—Did Mr. Joy, as the attorney of the defendants, or any of them, offer to you to settle or compromise the difficulties on the road in Jackson county, for a certain salary, or sum of money, to be paid by the company to the defendants.

Mr. Seward objected to the question.

Mr. Van Arman said if the defence would withdraw the objection, he would prove beyond cavil that Mr. Joy did make such an offer, when representing himself as the attorney of the defendants, or some of them.

Objection persisted in—question waived.

James J. Cicotte sworn—Knew Geo. W. Gay last fall; he resided in

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the first ward, on the Cass farm; remember when the depot was burnt; I knew something of Gay's circumstances; did business for him as counsel; just before that event he was hard up; his house was not comfortably furnished; soon after the burning he moved into the seventh ward, and there appeared to have been a great change going on in his condition; he soon afterwards had a pretty well furnished house and bar. This was in the early part of winter.

Cross examination, by Seward—My acquaintance with him runs back as far as 1835; he was a whig champion then, or bully at the City Hall; last fall he lived in first ward, and kept house of ill fame; I was there, and his house did not look prosperous; when he moved he went to corner of Fort and Riopelle streets; that is not a more fashionable part of the city; it is up in the direction where Fraser, Stuart and other lawyers live; soon after he went up there he added a bar to his busness, his furniture looked better, and he had more boarders.

Mrs. Sarah Osburn—I knew G. W. Gay last fall; he lived on corner of Michigan Avenue and third street; he was in very low circumstances as to comforts about his house; I observed a change in his circumstances in the fore part of December; after about that time the general appearance of his house was very much changed for the better; about the fifth or sixth of December he came and rented a bed and chairs of us, and after that he had those things of his own.

Cross examination, by Seward—We lived near where Gay did. We moved down near where he lived in October; have been in his house a few times; he was reputed to have kept a house of ill-fame; I did not visit there; never was in his house after he moved away; he got his new things a short time before he left, and took them with him.

Direct, by Van Dyke—I went to Gay's house with my husband, on business connected with renting the building.

Jonas Titus sworn—Reside in the city; remember the arrest of defendants. After Gay was arrested, I went with others to examine Gay's premises, the next day after the arrest. I found a match for burning buildings, under the side-walk, some fifteen feet from his house; this was in the morning, on Sunday, next day after Gay's arrest.

Cross examination—It was under the side-walk in front of his house, on the same premises; it was uncovered, except by the plank; it lay on the ground.

Direct examination—I was present at Gay's arrest; saw a private communication between Gay and his wife. After he was arrested and out of the door, he called his wife and had a private talk with her.

Cross examination—I searched the house twice on Saturday, the day I found the match; Phelps, Clark, Lake and Van Arman were with me; I had not looked where I found the match before the day I found it there. Phelps and Lake helped to search.

Henry Phelps recalled—By D. Stuart—I remember in the fore part of April I was at Gay's, and he and his son came down, and as they got to Woodward avenue he asked me for two dollars to buy camphine; I let him have it, and he gave it to his son, who took the jug and went to Parker & Brother far the camphine; I asked Parker & Brother to notice the boy who bought it; I went with Clark to show him Parker's, and told Clark about the boy going there; Gay used candles and oil in his house.

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Ferdinand F. Parker sworn—Live in Detroit; one of the firm of F. F. Parker & Brother; remember the circumstance of selling two quarts of camphine to a boy the day that Mr. Clark called at the store and mentioned the subject; the boys attend to that business; it is an every day matter to sell it to boys.

Lyman Baldwin, sheriff, sworn—Mr. Washington Gay, who stands indicted here, died in Wayne county jail, on the eighth of May; (a distinguished member of the bar remarked that if there was no "higher law" Gay was probably better off than when here.)

Henry Ledyard sworn—The steamer Mayflower and Atlantic both run in the M. C. R. R. Co. line on Lake Erie, and have been on that line for two or three years; the Mayflower is owned by the company, the Atlantic by Capt. Ward.

Cross examination, by Mr. Seward—Gay's house was not on the part of the farm owned by the family; it had been sold; don't know why he moved from the first ward; perhaps the moral and political atmosphere of the first ward didn't agree with him.

Court adjourned to the 28th, at 9 A. M.

TWENTY-THIRD DAY—MORNING SESSION.

SATURDAY, June 28.

Henry Phelps recalled on cross examination—The time I saw Fitch at Jackson he told me the boys would be at the Centre waiting for him; I cannot say whether it was the Monday before or the day before Christmas; can't say positively what day Christmas came on, but think it was Wednesday; am sure it was Monday I saw Fitch and that I went to the Centre Christmas, but don't know if Christmas was on Tuesday or Wednesday. Witness wished to explain—When I went with Showers, Hay and Grant from Jackson, and arrived at Michigan Centre, did not find Lake; the time I found Lake there I went with young Corwin; this was in March; I also went down with the above named persons on another occasion; the time I spoke of seeing Lake it was at Whittemore Lake, twelve miles north of Dexter, and not at Dexter, as published in reports.

Heman Lake sworn—by D. Stewart—Reside in Detroit now; in January last was at Whittemore Lake, ten miles north of Ann Arbor; know Abel F. Fitch and Ami Filley; first saw Fitch in February last, about 25th; saw him at Michigan Centre; I went from this city there with Henry Phelps; was introduced to him by Phelps at Filley's Tavern, soon after we got there; think I did not see Filley that day; had and heard some talk with Fitch; I was introduced by Phelps as a man who was to assist him in firing the depot at Niles; Fitch treated me kindly; he related the circumstance of the letter from Brooks to Goodwin, in relation to Wescott; said he had suspected Wescott of being a spy, but was not certain of it, until Goodwin showed him the letter; said he had accused W. of it, but he denied it, and said it was relation to hunting up a trunk; that he (Fitch) told him it was a slender excuse; he also spoke of Dixon, a wheat buyer for Bissell; said Bissell came out and openly told Dixon that he would keep him advised of the value of wheat, and that he could thus always pay four or five cents per bushel more than any one else; Fitch said he thought this was said to be heard by others, and was intended to blind them

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about Dixon's real business; it confirmed them in the belief that Dixon was a spy; said Dixon that day asked him to talk, and then asked him if it would be safe for him to stay there; that he had before been threatened for being a spy; that he (Fitch) told him if he was there to buy wheat only, he would be safe, but if he was a spy, he had better leave.

The same day went on foot with Phelps to Leoni, and was introduced to O. D. Williams, A. Filley, Wm. Corwin and some others; Phelps introduced me as his friend, in connection with the operations on foot; remember a quarrel about a tumbler between Filley and Corwin; heard Williams ask Phelps if I was the man who was going to Niles with him; he told him I was; Williams said he hoped he had got a good man, and said to Phelps he supposed he knew me, and if he could trust me they could; we went from there to Phelps' house; think I next saw O. D. Williams at Leoni; think it was Saturday, the first day of March, or near that time; there was a shooting match there; we went by appointment; in the meantime I had been in Detroit; at the shooting match had a talk with Williams about counterfeit money, and he asked Phelps when he was going to Niles; spoke to me about exposures, and said that if any body ever turned against them they would be shot down; said in the same talk that the burning of the Detroit depot cost him twenty dollars; said that if we could make a clean sweep at Niles, and get some one to do the same with the new depot in Detroit, he would pay double the amount, forty dollars, towards doing it; spoke of the cars being thrown off the embankment, and said they did a good thing; said Corwin, Filley, Woliver and two Prices were down there, and he furnished them with a bar to go and tear up the track, and he went home and went to bed, so he could be a witness for them if necessary, and swear that they were all at his house.

Next saw Williams at a grocery at Jackson; don't remember anything important said at that time; Phelps was with us; we all went up to Bascom's Hotel, and went into the sitting room, which appeared to be occupied by a doctor; heard it was occupied by Dr. Farnham; at that place had a talk; Williams said he wanted to swear me to be true to them; I told him to go ahead; he said the plan that he and his associates had adopted was that if any one ever took the stand as a witness against them, he would be shot down or sworn to hell—hitting me on the shoulder at the same time, saying "that's so, by God;" there was something said about Corwin, Price and others; he said there was a law suit there that day with Price about burning wood; and said that every dollar the company got out of them for burning the wood would cost them a depot; said the best thing they ever did was the burning of the depot in Detroit, but they got no credit for it; he asked Phelps when we were going to Niles, and said we could have Fitch's oxen if we wanted them; he spoke of Lester, and said he stood by him last fall, and kept him out of State prison; said the reason why they did not do the burning themselves was because they were so well known, and they rather hire it done, and they would stick by them for doing it. Speaking of the oath of fidelity, Phelps spoke of an incident at the prison in which a man was run out on a wheel bar-

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row in a bag of wool, and that I knew of it, and was put to a severe test about it, but they never made anything out of me, and if I could stand that and be true, thought I might be trusted. While we were there, Myers, Corwin and Kirkendall came in; Myers and Kirkendall soon went out, and Corwin remained; said he was glad to see me there among them, and hoped I would urge Phelps on to the Niles affair; complained of Phelps being too slow in the operation; said himself, Filley, Woliver, and two Price boys went down on the road, and Williams gave them a bar and they went and moved the track, and went and lay in the bushes until the cars came along from the west and run off; they were in hopes it would kill some of them, but it never hurt a d——d soul of them. Corwin said they got an old fellow to burn the Detroit depot, and it cost him twelve dollars, and said "we have paid the same man fifty dollars for burning it again, are to pay him fifty dollars more when it is burned." Think he said they meant to make a proposition to Brooks that if he would pay them one thousand dollars apiece for five years, they would let the road alone; Williams had said the same thing to me before; the proposition was to be made through their attorney; this meeting was on the first day of court in Jackson, in the forepart of March.

Went from the sitting-room to the bar-room, and there met Captain Fitch; he shook hands and we drank with him; he called us out on the steps and spoke of the Niles expedition; hoped we would go out as soon as we could; think he asked Phelps if he had seen Gay in this city, and also if he had seen Dr. Farnham'a machine for blowing up cars; Phelps said he had, but did not comprehend how it would work; Fitch replied, "let the doctor alone, he will bring them up right by and by;" spoke of getting a branch road from Jackson, which would destroy the central road by turning travel to Adrian; spoke of going to Lansing to effect this matter, and spoke of his influence; spoke of the burning of the old depot; that it cost him a cow and twenty-five dollars; also said he paid fifty dollars to the same man for burning the new depot, and was to pay him fifty dollars more when it was burnt; said if we would burn the Niles depot we could have his oxen, if we wanted them at one hundred and forty dollars, and the balance in money, sixty dollars, or we could have two hundred dollars in cash; something said of bogus, and he handed me two half dollars to look at; I put them in my pocket; we went into the sitting-room; Fitch gave Phelps eight half dollars, two gold dollars and a twenty shilling gold piece, they were done up in a paper in his pocket; said he would not pay in advance for the Niles affair; Fitch said he had taken a couple of matches to Detroit, similar to the ones used to burn the depot at Detroit, and given them to the same man who burned the old depot, and he would fit us out with one when we got ready to go to Niles.

I was iutroduced to Dr. Farnham as a friend of Phelps, who was going to assist him in firing the Niles depot; he asked when we were going to Niles; Phelps told him as soon as we could; in this conversation Dr. Farnham said, "we got an old fellow to burn the Detroit depot last fall, but it did not seem to have much impression upon the company;" but if we would make a clean sweep of the bridge and depot at

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Niles, and the old fellow at Detroit made a clean sweep of the new one at Detroit, he guessed it would wake them up; he said they did not get credit for burning the Detroit depot, because it was done so slick; something was said about his fixing Phelps' teeth, and he said he would do it and let it apply on the job of burning the Niles depot; Phelps asked him how he got along with his machine for blowing up cars; he told us if we would go to his house he would show it to us; we went up in the evening and stopped at the gate, as directed by him, who said his family did not know anything of the matter, and he did not want they should; we stopped at the gate, and he went round back of the house and brought out a machine, consisting of three tin tubes, sixteen or eighteen inches long, fastened at the larger ends; they were tapering from about three-fourths of an inch at the larger ends, to the size of a pipe-stem at the other ends; said the small ends of the tubes were to come up to the side of the track and be filled with powder, to communicate with a powder magazine under the track; the powder was to be fired by a composition placed on the track, to ignite when the cars ran over; he said he had tried it once, but that the composition was too soft; but that he had some now that was just right; we went about half a mile out of the village that night, and stayed at Wilson's Temperance House; went back the next day, and the doctor fixed Phelps' tooth, and agreed to fix his wife's teeth; we went that day to Marshall and returned to Phelps' house the next day; stayed there a day or two, and came to Detroit; while there Phelps and me went to the Palo Alto saloon, and found a man they called Smith keeping *talley*; don't know Smith; think this was about the tenth of March. There was a talk between Phelps and Smith, who spoke of his connection with Gay; said he was anxious to hear whether the boys Corwin and Price were to be put on trial at Jackson for burning wood, if so, he and Gay would have to burn the new depot, if not, they would have more time to let the building get dryer, it would burn better; spoke something of Gay's getting a pounding.

I saw Gay that night at a brick house called "Bill Browns;" I and Phelps left the city the next morning; Phelps got off at Francisco's and I went to Jackson. At the former interview mentioned, about the 4th of March, O. D. Williams gave me a five dollar counterfeit bill, which he said he had been taken up for passing; told me if I got in trouble for passing it they would get me out of it; it was on the Troy bank I think; I gave it to Mr. White; I met Williams at a grocery or saloon; he asked if I had heard from Detroit; told him I had just come from there; asked if I had seen Gay; told him he had got badly pounded; told him Phelps was at home with his family sick; he asked me about the five dollar bill; I told him I did well enough with it, and then he gave me another counterfeit five dollar bill on the Pittsburgh bank; I gave it to Mr. White; asked if I had heard of Fitch's letting more jobs on the road; told him I had a hint of it, (but I had not,) and asked him what it was; he said Fitch had let the job of burning the wheat house at Jackson to Mount and Ackerson, and he hoped they would be able to burn the wheat house the same time that me and Phelps burnt the Niles depot, and Gay the Detroit depot; had a talk that day with Dr. Farnham on the subject; think Corwin was

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there; the doctor spoke of the same thing that Williams had, about burning the Jackson wheat house, but said that Fitch said he did not care much about it, but it was such a d—d good chance he hated to let it slip; I asked the doctor how he got along with his machine for blowing up the road; said he was getting along pretty well, but there was no hurry, they would burn the Detroit, Niles and Jackson depots at the same time, and see how the company would swallow that; I went from Jackson to John Ackerson's, some five or six miles; went on horseback; had seen him before; I went to find out about it; whether he had taken the job referred to by Williams and the doctor; I stayed all night, and next day had a talk about counterfeit money, watches, bogus, horse stealing and matters and things in general connected with black-legging; think I asked him about counterfeit money to draw him into conversation, to find out about the job on the road; after talking a while, I told him I understood he had a job on the road; he looked up and smiled, and said he and Mount had taken the job of Fitch to burn the wheat house at Jackson, and had understood that I and Phelps had a job at Niles; told him yes; he said he hoped they would be able to burn the wheat house the same day that we burnt the Niles depot, and the old fellow burnt the new one in Detroit; told him I wanted to see Mount; he said Mount was in the woods, hiding on account of stealing a buggy wheel, but thought he could find him, as he knew where he was; we went and looked for Mount, but did not find him; as we got back to Ackerson's we stopped in the garden at an apple hole to eat apples; while there Ackerson's wife came out and said two strangers were in the house; Ackerson ran to the barn and hid; I went in and saw the strangers, but don't know who they were; I came out again after they left, and soon after Mount came out of the back room in Ackerson's house; I had seen Mount once before; Mount, I and Ackerson went to the barn and had a talk with Ackerson; going to the barn Mount spoke of him and Ackerson having the job to burn the wheat depot at Jackson, and also said he had heard that I and Phelps had a like job at Niles; said he knew Gay since he was a child, and came to the country with him; said "we all joined hands last fall and made up a purse for him, and he burnt the depot almost before they knew it." Mount also said he had got into a little trouble about grabbing a pair of buggy wheels from an old fellow in Jackson, that the old fellow was disposed to make a fuss and seemed to be a little out about it, and offered me a saddle and bridle worth thirty or forty dollars to assist him; he said he had also grabbed a piece of cloth, and Myers was coming to his house to make it up soon, and then he had his eye on a horse, and he and the new suit and the horse were all going off together; he said he was going to Philadelphia to see a friend of his, who he said had about one hundred loose women, and he could get a lot of counterfeit money, and wanted to bring back a half bushel of watches, as the women of his friend could pick up fifty watches most any night; went from thence to the Centre; saw Filley; he said the road had killed a turkey for him, and he would get his pay in some way; went from there to Leoni; saw Williams; he was on a bender; I stayed all night and talked considerable; he called me into a room and we talked about bogus money, &c.; he said when we got through

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with the rail road he wanted me to go with him off to the Mississippi, on an expedition for getting rid of counterfeit money; he insisted upon paying my bill at the tavern; went from there to Phelps' house; Mrs. P. was there and said Wescott had been there and wanted to see me; I went down to the rail road and found Phelps; Wescott and a friend of Phelps', from Canada, came to Detroit in a day or two after; went back the next day; I got off at Leoni, and Phelps went on to Jackson; I went on foot to Michigan Centre; Phelps came back from Jackson to the Centre; was quite a number about there; Filley was at home; Corwin, Beebe and others were there; strangers to me; heard Filley say they had taken out a culvert for them by putting a few rails in it and setting fire to them; the way he told it was that the wind blew the fence into the culvert and the engine set fire to it; something was said about the Niles expedition; Phelps said it was a difficult job, as they kept up such a close watch; Filley said he had better go out again and devise some plan to do it; and said, "we will bear your expenses;" think we stayed there one night and went to Leoni for breakfast; saw Williams, Myers and others; Williams asked Phelps if he had been to Niles; Phelps answered, yes, and found it a difficult job, as they kept such a close watch, and said Filley and the others thought they would go back and reconnoitre again; Williams said he thought that a good idea; a few days after, in the latter part of March, I went again to Ackerson's to see him and Mount, and get the saddle Mount offered to me, if I could, but he said he had disposed of it; Ackerson asked me where Phelps was; told him he had gone to Lansing; he said he believed Fitch had gone also; told him I wanted to see Mount, and we went to a tamarack marsh and found him setting behind a log watching the house; he had a hatchet, and we surprised him, he jumped up and drew his hatchet as though he supposed we were after him; when he saw who it was he was not alarmed; he said there were two men about the house, and he was watching their movements.

When Phelps and I started on the Niles expedition, last of March, we started from Detroit, went to Francisco's, and stayed all night at Metcalf's, where Phelps' horse was kept; in the morning went up somewhere to where Phelps said he had heard a man had a horse to match his; he went to see about trading horses—went south and saw the man and his horse, they did not trade ; from there we went to Michigan Centre; I there saw Filley: I was not very well ; think we both got out of the buggy and shook hands with Filley; enquired of him if the boys were there; he said they were not, he had not seen them for two or three days; Phelps said he should go back to Leoni and let them know he was to be there and they could come up if they chose. I was quite unwell, and went to bed. We told Filley when we first went up, that we had come to go to Niles; he said he was glad of it and they were ready for us. Phelps left me there, and went back to Leoni. I had something to eat and went to bed, laid about an hour and then came down. Filley and I had a talk about preparations to go to Niles. Filley went out to the barn; I went as far as the North door and stopped; he came back with the machine we were to take to Niles; he brought the match under his coat, and

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the box for it in his hand. I took it and looked at it; he did not allow any of his family in the room; ordered his boys out of the room. He then put it in the box and nailed it up, and put it in a small room adjoining the bar-room, and said it was ready to go to Niles; saw none of the defendants that afternoon—were some fellows from Jackson, who came down sporting or fishing. In the evening others came, and he took them off fishing.

I went down with them, but soon returned to the house, where I found Corwin, Myers, Phelps, and a stranger, in the bar-room. The stranger was Mr. Falkner, as I have since learned. I asked for O. D. Williams; Corwin said he could not come up that night; and said to me, that I had at last got Phelps started, and he was glad of it. Asked me to take some of the whiskey in the jug. Pretty soon Capt. Fitch came in and shook hands all around, and asked what the news was. Phelps had a talk with Fitch, which I did not hear. F., C., P., and myself, went out doors and talked the matter over about going to Niles; Fitch said they were ready, and glad we were on hand.

Phelps gave some message to Fitch from Gay, and Fitch said he would write immediately, and let him know what was going on there; he told us we had better go east as far as Grass Lake; told me I had better go and see Burnett; went into the house again and then out doors; we told them we were ready to go, and Fitch told Corwin to go in and fix us off; he went in and we followed him; he unlocked the door and got the box; I think Phelps went in ahead; I followed Corwin in; Fitch did not go in; Corwin got the box out and locked the door; I stood back by the bar; don't remember where Phelps stood: about that time the front door swung open and Phelps went and shut it and held it; he opened it for Corwin and Myers to go out; Phelps said no one could go out; I went out the North door; Corwin and Myers went under the shed with the box, and pretty soon placed it in the buggy.

Pretty soon Phelps opened the door he was holding and came out; I looked and saw Falkner standing in the front door. After Corwin and Myers placed the box in the buggy Phelps and I got in and rode off to Grass Lake: Corwin and Myers got into the other buggy and, as I supposed, went to Leoni; they said they were going there—don't know where they did go.

Here the court took a recess for one hour.

AFTERNOON SESSION.

Lake cross ex. by Seward.—My age is 29 next February, have lived in the State near 20 years, my family first settled in Farmington, stopped a few months and moved into the town of Novi, Oakland Co., and lived eight or nine years; got no trade but have worked at engineering; run an engine at the Prison; went for myself at about 21. Moved into Nankin in this Co., and worked on a farm some for my mother, who had moved there. From Nankin I went to the Prison; think I was 23 or 24 when I went to Prison; was convicted in this room, for aiding and assisting a man named Simons to break Jail; he was confined for larceny: I had not been connect-

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ed with his larceny: I done it because I thought he was a good sort of a man, and had been coaxed into crime. Think I was sent to Prison in 1845. I did not know Henry Phelps before I went there, knew him soon after I went there; was friends for a year or so; our friendship was broken off because I thought he wronged me there; and for a long time did not speak to him.

I staid five years; was not again on friendly terms with him while in prison; did not talk about bogus or counterfeit money; knew nothing of a machine for blowing up or burning buildings; did not talk with him before he left, came out of prison a year ago last June. When I came out, I went to my mother's and brothers' at Whittemore Lake; saw Phelps there in June; he drove up with his wife in a buggy; I did not know who he was for some time, but finally recognized him and asked him and his wife to come in and take tea; he did not stay more than half an hour. He said something to me about going to work for him in harvest; did not tell him I would.

In July after, Phelps called once to see me, when I was very sick; when he first came, he said he had been down to see his farm. The third time I saw him was in Redford, last January.

Had one letter from him last summer, asking me to come and work for him in harvest; did not go. I had been sick in Redford at my uncle's; he came to see me to engage in business for the R. R.; did not say exactly what he wanted me to do, but I formed an idea of what he wanted. I formed two ideas of what he wanted, but did not know which was right. He did not say he wanted me to help to convict Capt. Fitch; did not mention his name.

Have heard Fitch, Corwin, Williams, Mount and Filley, say they would make a clean sweep of the Depots at Niles and Detroit, at the same time.

These are all the persons who I now remember of having spoken of making a clean sweep, &c.; think Dr. Farnham and Aaron Mount said the depot was burnt so slick that they did not get credit for it; think I mentioned these two as having made this remark, in my direct examination, and think I spoke also of the others named as to the other remark about a clean sweep; don't know, but my opinion is that the match was made of white-wood; the day Phelps and I went to the Centre for the match, I think there was some straw in the box under the seat; we took the horse and wagon from Metcalf that morning; they belonged to Phelps; he had left them there some days before; at Filley's that day, I did not go to bed until after Phelps left; I think Phelps went into the bar-room, but he did not stop but a very short time before he left for Leoni; there was nothing said about my being pursued for counterfeit money; heard Fitch say he was going to Lansing, to use his influence to get a branch railroad to some place; don't remember whether it was to Adrian; think I heard him speak of it to Phelps on the stoop at Bascom's; Fitch gave me two half dollars; I afterwards gave them to White; they were bogus; we were talking of bogus money, and I asked him to show me some; I did not take this on account of burning the depot; O. D. Williams gave me a $5 bill counterfeit, on two different occa-

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sions; they were not paid on account of burning the depot; saw Fitch give Phelps the bogus money before mentioned; I never have been paid anything for burning depot; saw Corwin give Phelps a half a dollar good money the night we got the box and match.

I engaged for the road in February last, through Phelps; never made any particular bargain; afterwards saw White, and he wanted me to go to Detroit, and act under Phelps' direction; I did not know what my business was to be; said he would make no bargain then; I have had money for expenses when I wanted; don't know what my compensation is to be, never have made a bargain as to wages.

I first became acquainted with Ackerson in prison; he was a convict; I had but very little acquaintance with him, and did not agree to go and see him when my time was out, he left before I did. When I went to see him I told him I understood he had some bogus and counterfeit money, and gave him to understand that I was in the business, and wanted some; was in Detroit four or five times, from first of February up to the time of arrests.

O. D. Williams and Phelps were at Baskom's when W. proposed to swear me; I took no oath; he stated what their rules were and said "that's so, by God." I saw two matches at Gay's in this city, before I saw the one at Filley's. I went in the Niles depot, when Phelps carried ihe match in—took it out of the box and left it on the floor; think a little turpentine was put with the match before we left it; I struck a match, fired it, and we left it, and went to the tavern; did not see Clark.

By Frink—Have boarded most of the time in this city, with Wescott—lodged there—have been at the widow Gay's.

Have you slept there?

Objected to by Stuart.

The court asked whether it was objected to prove where a man sleeps. The Prosecuting Attorney said he made the objection partly for the protection of the counsel for defendants as well as for others.

Seward said it was important to show the conduct of this witness, one of chief witnesses in the case: the defendants were charged with conspiracy, but they intended to prove a conspiracy on the part of Lake, Phelps, and perhaps others against the defendants; and it was important to show the relations of this witness at the house where it was charged this atrocious crime was committed.

Van Dyke said it was a question of privilege with the witness to answer any question calculated to criminate or degrade himself.

Court ruled that the witness had the shield of the law to protect himself against telling anything that would render him liable to a criminal prosecution.

Stuart claimed that he had a right to refuse to answer any question calculated to degrade himself in a moral view: any question involving moral turpitude.

Witness refused to answer.

Question: Have you not since the death of Gay, been in the constant practice of sleeping with widow Gay?

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Objected to, on the ground that the question involves a crime directly; and cannot be asked any more than a witness can be asked if he has committed a murder.

Court ruled it was the privilege of the witness to answer it or not, if the answer would tend to criminate him.

Witness refused to answer.

Witness: I did not carry the widow into the country after his death; I asked her to go to Marshall some weeks ago, and she returned a week or more ago. Since she returned I took her to near Royal Oak in a buggy–stayed two or three hours and returned. I went to Marshall with her and returned the next day. I went after her when she returned.

Phelps first introduced me to Gay's on the night of the 24th day of last February—that was the first time I had ever heard of Gay. From that up to the time of the arrests I was there several times. He kept a sort of public house. Don't know but I stayed over night there once. Don't remember of hiring Gay to keep a woman. I did not pay her fare to Marshall—had a pass for her—took her out there to keep her away from others, who were after her for a witness.

On the 4th of March, at Jackson, stopped at Bascom's Hotel—saw Williams there in sitting room below stairs, on the left hand side of the hall—don't know whether there was a carpet on the floor. When we went into the room there might have been a lady in, but she went out. Can't say how long we were there.

I know where Burnett lives. I was not at his house the day Phelps and me went to the Centre, by way of Cady's, to trade horses. We did not go through Leoni. Think they had been at dinner at Filley's when we got there. Filley was about there most of the afternoon, while I was not a bed; I went up to the pond fishing with him —returned pretty soon.

I did not tell Filley I had a bundle I might want to get before he got back to the house. I had no bundle or baggage—did not carry a box or bundle there that day. Did not put any thing in a space near the fire place.

Am not acquainted in that section of the country, and can't tell exactly which way we came into the village.

First time I ever saw one of these matches was at Gay's—did not see such a thing at the prison—there was something said in the prison about a cannon—can't tell who spoke of it, except the keepers. Had no arrangement with Phelps to stand by each other when we both got out of the prison. When I left the prison I thought he was such a man as I wanted nothing to do with—have often told my friends so since *I* came out of the prison. Should not have come to Detroit with Phelps had *I* not heard from Westcott, because *I* did not like him.

When at Filley's that day, during the afternoon, *I* helped Filley to fix a penstock—did not say anything to him about keeping a bundle for me—*I* had no bundle. Fitch was not in the room long that evening. Heard Phelps ask him to drink, and he refused. He did

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not leave immediately after that. *I* saw him sometime after that out doors by the buggy. Don't remember that Phelps asked to borrow money of me to pay his bill. There was nothing said by Phelps about hiding me, or of my having got unto a fuss at Detroit about passing counterfeit money. Saw Corwin give P. half a dollar. Don't know whether P. paid his bill. *I* gave Mrs. F. a quarter during the P. M., as she had been very kind to me while *I* was sick after *I* first got there. P. and *I* fixed upon that day to go there before we left Detroit. We had previously had an interview with Clark

I knew Adams, a convict in theprison, a stone cutter; *I* did not tell him while there, that a match or machine of any kind, was got up in the prison to burn buildings; did not tell him there was any arrangement between Phelps and *I* to make our fortune after we got out of prison, burning buildings; had never known any of the defendants before the 24th of February last. *I* have made an affidavit of what *I* have sworn to, up to the time *I* was in Bascom's sitting room. Have not kept a memorandum of all that has transpired; Phelps kept a fuller memorandum than I did. I have not read my affidavit since it was made; Phelp's affidavit was looked over in my presence last evening; P. and I never looked over memorandums together alone, and agree to what we should swear to; I discovered one mistake in his narration; I sometimes told him things which he put down, which occurred when we were not together; I am still in the employ of the road; have done anything directed by them from one thing to another; have been doing nothing since this case was commenced but waiting as a witness.

By Hewett.—Had a talk with Smith at the Palo Alto saloon, in the bar-room; no one but Phelps present; he was keeping tally when we went in.

Direct Ex. by D. Stuart.—I took Mrs. Gay to Marshall and Royal Oak, at the suggestion of Messrs. Clark and Stuart.

Why was it done?

Objected to by Seward.

Stuart said they wish to show that some of the counsel for defendants, were in the nightly practice of visiting and making improper approaches to this woman; that they were exerting an improper influence over her, with regard to this trial, for the purpose of using her as a witness; that propositions were made to her to go to Pittsburgh, dressed in men's clothes, to try and liberate Joe Dows; to get him back here, to aid the defense. The prosecution knowing these facts, took measures to protect her against the influences of the said counsel, in order that she might not be induced to become a witness in this case, for the purpose of defeating the ends of public justice. It was for this reason that they sent this witness to get her out of town, in order to keep her from being improperly used as a witness by the defendants.

Seward said he should object to having it proved that he had frequently visited the widow Gay.

Mr. Van Dyke said he would freely exonerate Mr. S. from the charge.

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Mr. Wm. A. Howard also said he should object to having it appear against him.

Mr. Hewett, counsel for defendants, rose and said he was the counsel referred to, and owned up that he had visited the widow several times professionally, as counsel, believing that she knew something of this matter; but that he usually found a railroad spy there, watching over her. He said from what Gay told him before his death, he thought she must know some important fact connected with this matter.

Objection sustained.

Witness—I was convicted for aiding an escape from jail.

What part did you act in the matter?

Objected to and argued by Seward, at some length. Replied to by Van Arman, Van Dyke and Frazer.

Objection overruled, and exception taken

I was charged with conveying, or aiding and assisting in conveying a small saw or file into the jail, to aid a prisoner to escape.

Aaron Mount said he had been acquainted with Gay since he was a child, and came into the State with him. What I have sworn to is not from the affidavit I made, but from my memory and knowledge of the facts.

Here the Court adjourned to Monday the 30th, at 9 A. M.

TWENTY-FOURTH DAY.

MONDAY, June 30th.

Mr. Van Dyke stated that Mr. McFarlane, one of the jury, was sick, and unable to be present this morning; and suggested that the court adjourn until to-morrow morning.

The court said this course would have to be adopted, unless counsel would stipulate and agree to go on and take the testimony, and afterwards read it over to the juryman on his return into court.

As the prospect was that Mr. McFarlane would only be detained for a short time, it was thought best to adjourn over: and the court adjourned until to-morrow morning at nine o'clock.

TWENTY-FIFTH DAY.

TUESDAY, July 1st.

The jury being called, and Mr. McFarlane still absent owing to sickness, it was proposed to adjourn over till next week. After hearing reports of the prospect of the absent juryman being unable to be in court for several days, the court adjourned until next Monday morning at 10 o'clock.

TWENTY-SIXTH DAY.

MONDAY, July 7th.

The Court met this morning, and adjourned until to-morrow morning at 9 o'clock, on account of severe illness in the family of R. C. Smith, one of the jurymen. Mr. McFarlane had recovered, and was in court.

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TWENTY-SEVENTH DAY.

THURSDAY July 8th.

The jury being all present, the case was continued on the part of the prosecution.

Delos J. Holden sworn—examined by Van Arman—Lived at Jackson for 12 years; know Abel F. Fitch; had a conversation with him in February last, about some pistols he handed from the window, it was at Michigan Centre, near the saw mill; was at the mill getting in logs, and heard the report that Fitch had hired some one to burn the depot in Detroit, and that he handed certain pistols out of the window to Wells or Laycox, to shoot the cars; asked him about it; he told me he did hand the pistols out of the window to them, mentioning either Wells or Laycock, or both, but either said they were not loaded or that they were only loaded with powder, and that he handed them out for them to fire at the cars merely to frighten the engineer, and alarm the road.

Cross examined by Frink—He did not say the pistols were not loaded but that he afterwards heard they loaded them; told Fitch I had heard affidavits had been made to these facts about the pistols, and asked him about it; that is the way the conversation took place; he did not deny but the affidavits had been made, but made the above explanation in regard to it.

George H. Holden sworn—Live at Jackson; was there during the time of the court on the 4th of March last; saw Phelps there; did not know Lake at that time, and don't know as he was there; saw Phelp's in the sitting room at Bascom's tavern with Corwin, O. D. Williams, and others; they were talking privately, when I went in they stopped; they were sitting close together, facing each other; there were some five or six there; know it was on the 4th of March because I served a summons on Phelps that day; don't know whether I saw Fitch that day or not.

Cross ex. by Frink—Bascom's is a public hotel; the sitting room is on the first floor, on the west side; there is a hall between the sitting room and the bar room; Dr. Farnham was not in the room; I recognized Corwin, Phelps, and O. D. Williams; did not know the others, think I had seen some of them before; the door was shut when I went in; they were at the south west corner of the room, in chairs, or on a sofa.

James Fitz Morris sworn—Reside at Niles; am weigh-master and shipping clerk for the M. C. R. R. Co. Remember the fire at the depot, in April last: saw Phelps there in March; went to Winterhalter's grocery with him: this was in the morning; saw a man with Phelps who called himself *Monk*; afterwards learned his name was Gun, he is now here; he was pointed out to me by Thompson: he and Phelps were talking about Sherman, about getting him out of the way, but the conversation was so low that I could not hear the whole of it; Phelps had been there the day before; went over to Winterhalter's to see the man who called himself Monk, and was told by Thomson to take particular notice of him, in case I should be called upon to testify about him; saw the match that was used to

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fire the depot. Cross ex. by Frink—This conversation was a while before the depot was fired; the fire originated on the second floor, on the south side, the building was not burnt much; Phelps and Gunn were together at the grocery when I first saw them

Amasa B. Gibson sworn—Reside at Jackson; know Fitch; had frequent conversations with him relative to the depredations on the railroad; he usually excused those who committed them, and told the reasons why. At one time at Bascom's, told him I thought he ought to persuade the people down there to desist, and he said that the reason for the course they took was because they had cattle killed and the Co. would not pay for them, and illustrated by supposing if I owned a large tract of land near the town and the village cattle troubled me, I could dig pits and get the cattle into them—the land being my own, they could not help themselves—the owners of the cattle had a right to take the law into their own hands, and that would be their only remedy.

Had a talk with Barrett about a cow killed in the presence of Fitch; said he could not get any pay, and that the company or Mr. Burch burnt her up; said the company had offered him $15; told him he had better have taken it; said he would but for the neighbors, who opposed it.

Cross ex.—I did not charge Fitch with committing depredations: talked with him about the result of the course he was taking, by encouraging the depredations, and told him as he was influential he ought to discourage such things: he always excused the depredators in their acts. Speaking of throwing of the cars, and injuring innocent people, he said it would be wrong.

Darius Clark recalled—Know Hiram Hay; have had conversation with him two or three weeks ago about the delivery of the box at Filley's; said he was in the bar room and saw Corwin unlock the door and take out the same box that has been shown here and put it into Phelp's wagon. Said on his way home he asked Hudson if he saw that box taken out; Hudson said he did not. Hay said he did not know what it meant, but he saw the box taken out. Hay said he heard some of the remarks that evening which have been sworn to by witnesses here.

The box exhibited here is the one used to fire the depot at Niles, and would have burnt the building had it not been watched and put out. Part of the material was previously taken out, to prevent as much fire as it was calculated to produce. I blocked up some two feet. It first produced a small blue fire inside, and then flashed up.

At Gay's house I took notice, but saw no camphene lamps about the house. Saw the match there. Gay said he had the same kind of tools for burning the new depot that he used in burning the old one,&c.

Cross-examined by Frink.—I was at Niles when the depot was fired. Phelps or Lane carried the match up-stairs; they both went up; it was about 10 P. M. Think the match was taken out of the box before or soon after it was fired. It was some five minutes after the fire was put to the match before it exploded. I saw the match at Mrs. Lake's before I went to Niles—observed it closely.

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The match at Gay's was nearly like it; it was partly square and partly round. The one afterwards found under Gay's side-walk had been experimented upon.

Some of the filling was taken out of the match at Niles, before it was fired. Think Thompson and myself directed Phelps what place to leave the match in the building; Thompson is in the employ of the road.

J. Van Arman, recalled.—On cross-examination by Frink.—Think I first went to Gay's house, April 1st; at night; was introduced to Gay by Phelps, as a man from Indiana, as one of his friends, and that he (Gay) could repose confidence in me. Phelps and me staid some two hours; Clark was not there that night. I was next there about the 8th or 9th of April. Clark went with Phelps and me that night. I never myself told Gay distinctly that I had counterfeit money, until the last night I was there; that night I told him that I could procure any quantity of counterfeit that would defy the devil himself to detect; and thought they were worth a trifle more than genuine bills. On both of the two last nights I was there he distinctly spoke of burning the depot in this city, last fall, and of some of the persons who employed him, and what he got for doing it. I made some inquiry about burning, and asked how money could be made by burning, &c., and told him I was on hand to assist in anything he had going on, if there was any fun in it; told him I did not care about making money, as I could make enough in my own way, but was in for any kind of fun to help my friends.

Gay spoke of Fitch, Aaron Mount, and others who he was acquainted with, as his friends at Michigan Centre, and offered to go out and introduce me to them. Said they had hired him to burn the depot, &c.; did not speak of arsons generally, but of burning the depot last fall and this spring.

Direct examination, by Van Dyke.—On the last night we were at Gay's, he told us he burnt the Depot last fall, and that he was hired to do it by his friends at Michigan Centre; said they would give him $200 for burning the new depot which he said was $50 more than he got for burning the old one. He mentioned the names of Fitch, Filley, Mount, and I think O. D. Williams as among his friends; wished Clark and me to go immediately up to Mich. Centre with him and get acquainted with them. Said his friends at the Centre, had furnished him with the tools to burn the depot. He wanted us to come up next day, and spoke of the plan to burn and lay it to Boyce; said he would see Stuart the next day and see whether Boyce was in jail, &c. &c.

Cross examined.—Phelps was with me alone when I saw the match at Gay's, Clark was not present, it was in the room where I saw Gay come out from a moment before.

THE PROSECUTION HERE RESTED THEIR CASE.

Mr. Frink, for defendants, said they should move for the discharge of several of the defendants, but wished until afternoon to make the motion.

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Court said they did not see the necessity for asking time to make such a motion, after having had some week or ten day's adjournment in which they could examine their testimony, and discover its bearings.

Mr. Van Dyke said they could go on with their opening and make the motion afterwards.

Mr. Wm. A. Howard, for defendents, said there were many witnesses to be sworn on the part of the defence, and many of them only to one point, and as to one man, and therefore they wished to dispose of all the motions they had to make before they proceeded to open the defence to the jury. The discharge of several of the defendents would be included in their motion, and they wished this matter disposed of before-hand.

The Court said they did not see the necessity for delay. Though willing to grant all necessary and reasonable delay to either side; but did not wish to waste time when there was no good reason given. It appeared evident, however, that nothing could be done until the counsel went home and examined their papers, probably for the first time during the trial.

The Court therefore took a recess until half past one o'clock.

END OF PART FIRST

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ERRATA.

The portion of page thirteen placed in parenthesis is a note by the Reporter, and not part of the testimony of the witness. In the Report of Mr. Van Dyke's remarks on page sixteen, the following line was omitted: Mr. Van Dyke concluded with some allusions to "the higher law."

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DEFENDANTS' TESTIMONY.

AFTERNOON SESSION.

JULY 8th.

DEFENDANTS move that the following defendants be discharged, and judgment entered in their favor, for the reason that there is not sufficient evidence against them to put them on their defence:

Moulton, Tyrrell, Grant, Hay, G. Filley, Penfield, Laycock, Burnett, Warner, Lemn, Barrett, Beebe, Welsh, Hill, Stone, Lang, Showers, Palmer, Ladue, Gleason, Barbour, L. E, and W. Champlin.

Mr. Stuart, for the prosecution, enters a nolle prosequi, as to the defendant Welcome Hill, who is accordingly discharged.

In consequence of the necessary absence of Mr. Smith, one of the jury, a stipulation was made between counsel to go on with the case during his absence.

Wm. A. Howard then opened the case for the defence, at some length.

He alluded to the obligations of the jury; to the manner of the arrest, and the fact that the prisoners had been brought before the grand jury without any previous examination, and had not been at liberty from that time; and that the nature of the proof against them was not known, until brought out on trial.

Mr. Howard thought the mass of testimony adduced in regard to the depredations only went to show that they were the result of momentary and excited feeling, and not of a preconcerted plan.

The defence would show, by four respectable witnesses, that the box used in the Niles' affair was carried to Filley's the day it was received there, by Phelps and Lake in their buggy.

Defence will prove the full and complete existence of a conspiracy on the part of the three principal witnesses for the prosecution, that to gratify revenge, to make money of the Railroad Company, they had created circumstances and deceived their employers. Will prove facts which could not exist without such conspiracy. Would bring dead, cold, mute, inanimate matter here; it shall be made to speak in thunder tones, and

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show that positive statements, made by witnesses, are physically impossible. Will contradict statements by credible testimony; and, so far as we may deem proper, shall resort to general impeachment. Will prove, that long before the acts of conspiracy took place, Phelps and Lake deliberately entered into designs to make their fortunes by burning buildings, and by getting innocent men into, and their friends out of limbo, and then to pocket the rewards. That the means to be used was just one of these matches; that it was known in the prison to them, and there it was called a revolving cannon. That they came out of prison with this design. We shall show, that for the last seven or eight years, Phelps has sworn he would have Fitch in prison, if it cost him his life, That Phelps was well acquainted with the construction of, and deposited the matches with Gay; and with Gay concocted the story, and then invited the railroad agents there to deceive them.

Shall show the connection of Phelps and Lake with the box at Filley's; that they took it from Phelps' house in Saline that morning, to Grass Lake, in their buggy; and that a red handkerchief was tied around it. That they went to Grass Lake, and from there to Cady's, and talked about trading horses; that from there they went near Leoni, and Lake got out out and walked across the field with the bundle, and was again overtaken by Phelps; that they rode together to Filley's, where the box was by them placed in the cupboard over the mantel piece. That Lake pretended to have the ague, and went to bed, and Phelps drove to Leoni; that when Filley came home, near sundown, Lake asked him to put the box under lock and key, and that Filley took it into the liquor room, set it down on a barrel, locked the door, and then put the key in his pocket.

That Filley went to fish with his boy alone, and that Lake followed him to the pond, and asked him when he would return, and Filley told him not until twelve o'clock. Lake stated that Phelps would be after him that night, and asked for the key, and Filley gave it to him to carry to Mrs. Filley. That in the evening others, as well as Phelps and Corwin, came in; and also that Phelps hired Corwin to go to Filley's for the purpose of implicating him, and paid him two dollars in one-dollar bills on the bank of New Redford, and Phelps paid for the jug of whiskey they bought. That, becoming noisy from the liquor, Mrs. Filley gave Corwin the key that he might hand Phelps and Lake their bundle and get rid of them. When they left, Phelps said, "Fix us out," and Corwin carried the box out and placed it in their buggy. That when they left, they said they were going to Jefferson to hide Lake, who had got into trouble about bogus money, and represented that the very box they carried contained bogus.

The defence will be able to produce the very block from which the matches were cut, and show that it was found concealed and buried on his premises, and that it bears the marks of having remained in that identical spot since long before the arrest, and will produce the person from whom Phelps and Lake borrowed the augers to bore the holes.

We shall show that old Gay, about that time, did receive ninety-five dollars on a bona fide debt, and this accounts for his sudden prosperity.

That it was physically impossible that old Gay could have got to the

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depot on the nineteenth of November; that he never left his house without crutches for three weeks, at that time.

That the fire never originated in the cupola of the depot.

We will bring here, and make profert of the fence, Westcott said he crawled through at the time he swears to having overheard the conversation between Fitch and his wife, and show that he could not go through as he testified; and that Fitch and his wife had not slept in the bedroom for three months before, nor three months after that time. Mr. Howard concluded, after some allusions to the character of the witnesses.

On motion of Mr. Stuart, Mr. Goodwin, of Auburn, N. Y., (brother of Judge Goodwin, of this city,) was admitted to practice in this court.

Court adjourned till morning.

TESTIMONY FOR DEFENCE.

WEDNESDAY, July 9.

Mr. Seward — States that owing to some delay in the arrival of witnesses, he will not to-day be able to introduce testimony in the regular order he would desire — will endeavor to do so to-morrow.

Wm. H. Hudson — By Mr. Seward — I live at Michigan Centre, Jackson county, and have for five years. Am a miller. I live about forty or fifty rods from Filley's farm — I lived there in April, I was at Filley's on Friday, April 11th. I had been to see one Credit, about a wagon, and, as I returned by Filley's, saw two one-horse wagons at the door, and dropped in — one of the wagons belonged to Mr. Corwin. I saw Fitch outside, near one of the wagons, he seemed as if he had just come across. I saw no one outside but him. He and I passed a few words about Corwin's horse.

Mr. Van Dyke — Objects to giving the conversation between Fitch and witness.

Mr. Seward — Contends that it is admissable as part of the *res gesta*, being a part of his conversation on the evening, and at the time a principal fact was proved to have taken place.

Objection sustained, and an exception noted.

Witness — After speaking with Fitch, I went into the house, and there found Corwin, Myers, Hay and three others whom I did not know at that time. I have since seen two of these persons — they were Phelps and Lake. This was, I think, not past seven in the evening. I went in alone, not with Fitch. Soon after I went in, Phelps asked me to drink — and we all drank. The drink was in a jug on the counter. About that time Fitch came in, and Phelps asked him to drink; but he declined, on account of a pain in his side. Fitch passed along near the fireplace on the north side, and Phelps came out from behind the counter, and they had some talk. The first I remember was, Fitch said to Phelps, "You did not remain long in Lansing?" and Phelps replied,

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"No, he had done his business quick, and got state bonds for $3,200," and that "a small amount was better than nothing." Phelps also said that his horse had run away, but that before that he had been very steady. Phelps also said, he had a friend in Minesota who had graduated with him — he thought he could do well, and was going to move there the next week. I don't remember any more conversation that I heard there between them. Fitch, during it, was standing between the fireplace and bar, and Phelps two or three feet from him. I had no timepiece, but I think they talked on that spot ten or fifteen minutes. I have no recollection of seeing Fitch after that conversation ended. Don't remember seeing him go out; but he was gone, and I did not see him in the house again that evening.

After Fitch went, or was not seen by me, there was a good deal of moving about, and some drinking, by the persons there. We drank twice after I saw Fitch; the last time all drank save the third man, who I heard was Faulkner, but did not then know. I remained there from one to two hours — I remained there till all left save the man I did not know. Don't know the order in which they went out, but Phelps, I know, was the last. Corwin and Myers started off in their wagon, and soon after, Phelps and Lake, in their buggy. Phelps said the jug was his, and he would take it along, and did so. I saw or heard nothing of a box while in the house. After I left the house I talked with Hay, but there was no one else present. I heard no conversation about the box while Phelps and Lake were there.

Mr. Seward — Offers to give the conversation between witness and Hay.

Objected to. The objection sustained, and exception noted.

Cross-examined — Before going to Filley's, I had been at Credit's. I left home for Credit's, about dusk. I was at Credit's about half an hour. Credit lived about thirty or forty rods from Filley's. I had no business at Filley's — merely dropped in by chance. I first saw Fitch between the shed and the house, outside. I am not positive if he was standing still, but we passed a few words there. The shed is on the same side of the street, a few feet north of the west door of the bar-room. He was alone. He came in after me, perhaps a minute after me, but not more than five. There was a good deal of talking, but I did not pay much attention to any, save what I have given; *that* I attended to, as $3,200 seemed to me a large sum. I sat on the bench with Hay, Faulkner sat nearer to the fire. Faulkner did not join in the conversation, but drank; the others were all talking to each other; they did not speak to me, beyond some ordinary observation. Don't remember that any one spoke to me, save Corwin, Fitch, and Phelps. When I was first spoken with about it, I had no recollection of what passed. At first I did not remember I was there on the eleventh of April, and had no distinct recollection of anything that passed.

My conversation with Mr. Hay had quite escaped my recollection, till Mr. Hay after reminded me of it. I did not see Filley there at all. I remained three-fourths or one hour after Fitch left. I did not state in writing, that Fitch and the rest left about the same time. I did make a statement in writing.

Van Arman — Handing paper. Is that the statement?

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Witness — If I stated so, it was a mistake: this paper seems to be the statement I made. I have no recollection of seeing Fitch after the conversation I have stated; I did not see Fitch go out and come in again: did not miss him, and see him in again; I do not pretend to speak accurately, as to time; I merely dropped in. I think it was about ten o'clock when I got home, but after I left Filley's I had some talk with Hay. The matter was partially forgotten till called up, and there was a good deal of conversation that I did not hear, and do n't pretend to give; they appeared to me to be on a spree and feel well, and moved about and talked a good deal.

By consent of counsel, the statement shown to witness is read to the jury.

Re-examined — Mr. Clark or Wood drew up the statement; I do n't remember that anything was penciled out when I signed the statement. The statement I have made on the stand as to the time Fitch left, is the true one. A change was made in the written statement in respect to the box, it was first stated as from my own knowledge, when in fact it was what Hay said to me.

Re-cross-examined — Hay and I left together, on the way he spoke of their having a box, but I do n't remember any more he said. I know A. Filley. I remember the night some boards were burned there; I was at the fire, and I saw tracks of a person's bare foot. I have said it was Filley's track, but it may have only resembled it, there was another track, as of a person with a slipper, that accompanied the other track. The lumber was railroad property. I noticed the track while the lumber was still burning that night, and more closely next morning; the track was of a foot with a narrow heel and broad ball. I have seen that Filley makes such a track, I can't say it was his, as some other man may make a similar track. The next day I asked Filley why he burned the lumber, and he replied, that there could be no fence built there till they settled with him. The lumber was there to build a fence.

To Mr. Seward — There was no deformity in the foot. Filley had grain in his store on the same side, west a little of the lumber. The ground was tolerable dry — there were two tracks that seemed to go straight to the lumber, and straight back north — these are the two I have mentioned. There were other tracks around, and other persons at the fire before me. I, by talking with Hay since, do remember that he spoke with me about the box. I only remember that he spoke of it — do n't remember what he said. Had forgotten it all, till he reminded me of it. It was not at the time he told me about Corwin having unlocked the door and taken out the box.

To Van Arman — The store is very little west of the lumber — so near that it was in danger of fire. The track came from the north to the east end of the lumber.

To Juror — There was but little wind that night.

James O. Cross — I know Fitch. I was at his house one Friday night, in the fore part of April last — do n't remember the day of the month. I live in Jackson county, about twenty-three miles from Fitch. Have been acquainted with Fitch about sixteen years; also knew him when a boy. The day I speak of, I got to Fitch's about four or five P. M. I was

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alone; I found his family at his house; do n't remember that there was any one else there but his family. When the sun was about half an hour high, I went to Welch's, about half a mile from there; was gone about an hour, and came back to Fitch's about half an hour after sundown. On my return, I went into the house, and found Fitch there. I think, beside his family, there were a couple of ladies there, and perhaps they were there when I left for Welch's. I remained at Fitch's till the next morning. I spent the evening in the house; Fitch left the house between eight and nine o'clock — there was some loud talking across the road, and he went out; he was absent eight or twelve minutes; I did not take particular notice. I retired about twelve o'clock; I do n't remember that, during the evening, Fitch was absent but the once. I left for home about eight, A. M., next morning. One of my neighbors died the night I was there, and his family informed me it was the eleventh of April. I was there only once that spring.

Cross-examined — I went to Welch's a little before sundown, and came back about half an hour after sundown — Welch was at home. I do n't remember who the ladies were at Fitch's. I don't recollect that these ladies remained during the evening: my impression is, that they did not, but can't be positive. We spent the evening in the kitchen. There was also another lady, who came in between eight and nine, and stayed about an hour; I do n't know who she was; I have a faint recollection that her name was Tull. Fitch and I conversed principally about our friends in Connecticut. About three weeks ago my attention was called to what I knew, by Mr. Hocum, at my residence. I was not out at all that night, and did not see any one come to or go from Filley's.

To Mr. Seward — I can't tell the lady's name who spent an hour there — she was not tall.

Andrew J. Kane.— Reside in Jackson county. Know A. Filley: he resides at the Center. I was at his house in, I think, the month of April last: I went in a buggy with Mr. Allen: I got there about twelve o'clock; I was not there more than once with Allen. A man named Hay or Hays, about twenty-five years of age, got off the cars that day at the Center. I remained at Filley's about an hour, and dined there; Filley dined also, and said that after dinner he would go to the pond with us. After dinner, Allen, Filley, and self went up to the pond, about two miles from the Center—we went there to hunt: Filley remained with us about two hours; Allen and I remained till four or five, and then returned to Filley's. Filley left us near Loucks', about a mile from the tavern, about an hour before we started back for the tavern; when he left us, he went toward his house; when we returned and put up our horses, we went into the bar, and then into the ball alley, and there found Filley. Before we started with Filley, I did not see any stranger at the house; after we returned, I did. Lake has been pointed out to me since I came to the city,— so has Phelps; but then I knew neither. I can't say if the stranger I saw on our return was positively Lake, but he resembled him — this person I saw in the ball alley. We left Filley's to return to Jackson about four or five P. M.

No cross examination.

Norman Allen, Jr.— Reside in Jackson, and have for nine or ten years. Know Filley, he resides at the centre. I was at his place in

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April, I think the second Friday in April—it was on Friday. I went with Kane to hunt — we stopped at Filley's — got there about twelve. We took our dinner in the yard, and Filley said he would take his in the house, and go up to the pond with us. We remained there about three-quarters of an hour, and then we three went up to the pond; were gone about three hours. Filley left us on the shore, about three-quarters of a mile from the tavern, and returned before us. It was near five when Kane and I returned. At that time I knew neither Phelps nor Lake, nor have I, to my knowledge, seen them since I have been in the city. On our return I saw Filley in the barroom. We stepped into the ball alley with another man, tall and with red hair, who, from description, appeared to be Lake. On our return from the pond was first time I saw this man. Filley went into the ball alley with us. Have been there only once with Kane.

Cross-examined—When we started, about five o'clock, we left Filley in the ball alley. The person I supposed to be Lake, went from the bar to the ball alley with us. He did not roll any. Did n't hear him say anything I remember now. I saw a young man get off the cars, called Hay, who came in with his satchel, but said nothing.

J. W. Brooks, recalled for cross-examination—I received the letter in by hand, dated October 29, 1849, and signed by Fitch, in due course of mail.

[This is the letter heretofore read in evidence.]

The paper now shown me, dated October 31, 1849, is a letter written by me in reply to it.

Another paper shown witness is admitted as being in the hand-writing of G. V. N. Lothrop, ex-Attorney General.

The letter of Mr. Brooks is read, and is as follows:

DETROIT, October 31, 1849.

Dear Sir,—You have herewith a handbill which has been quite extensively circulated upon THE LINE, but suppose from your note that it has not met your eyes. If any train has passed your station, which, according to it, should stop there, I would be quite obliged for any information that will point to a specific train, when I can correct it.

Respectfully yours,

J. W. BROOKS, Superintendent.

ABEL F. FITCH, Esq. Michigan Centre.

The letter of Mr. Lothrop, addressed to Messrs. Fitch, Burnett, and Crane, dated June 2, 1849, was also read.

Witness — Mr. Lothrop never was attorney for the company, but in his official capacity was applied to in some cases. It was my direction to keep watch last fall on the depot. I occasionally saw them, and suppose watches were kept there at the time it was burned. I think there was a constant watch throughout the whole twenty-four hours. The day watch was more to protect property than to guard against fire.

I offered a reward, I think five hundred dollars, for the apprehension of the persons who were committing depredations. Have no distinct recollection of offering a reward, either publicly or privately, for those who burned the depot—would remember if I had; but, in private

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conversation, may have used the observation, that I would give a reward. At the time of the fire I resided about half a mile from the depot. The present depot is the same size, length, and height, as the old one; the old had three, the present only one cupola. The skylights in the roof were on each side alternately. The middle cupola was not quite in the centre, but so near that the eye could not detect that it was not. The present cupola is in the same place, and about the same size and style as the old one. The walls of the new correspond with those of the old one. There were doors on the side above the second story—don't remember how many, but several, with lights over them.

I think the skylights were lower than the lowest part of the cupola. The skylights were perhaps seven by five lights, each light eight by ten.

To Van Arman—The new building, in size and height, corresponds with the old, but there are cross-walls in the new that were not in the old, the machinery is in the same place. I presume the train complained of by Fitch, was one that should not stop there. I so presume, as no answer was given to my letter. It was the intention to have one train each way, stop at the small stations.

THURSDAY, July 10.

Edward Higby— I am acquainted with the defendant Fitch, and know his residence — it is a two story house, with the end towards the railroad. The fence on the side next the railroad is similar to the piece now shown in court. The line of fence similar to this is about sixteen rods — this fence runs west from the south-east corner the whole length of the yard — this piece is a part of that line of fence cut out by myself and Champlin — it was cut out by us last Sunday week about sunrise. I examined the fence minutely from end to end, taking hold of each rail and examining the nails — in the bottom of each rail there were in all two and in a few three nails. I examined to see if any nails or anything else had been broken, and found no evidence that any nail had been broken, or removed, but from the manner in which the paint of the fence covered every nail I saw that no nail had ever been removed, save the tenth picket from the west end of the yard, where one new picket had been put in; this is nine or ten rods from the west end of the house; this picket was not painted — all the rest are painted the same color; this new picket had the appearance of being on some little time. The fence on the east side of the house I also examined; it is similar to this fence; there I found some pickets broken at the top, some gone, and some broken at the bottom — the portion that was so is principally north of the house and in front of the kitchen — the portion south of the house is generally perfect.

Witness here shows to the jury a plan of Fitch's house which he testifies is correct.

Witness — One picket removed would leave at the bottom a space of four inches, and at the top six and five-eighths to six and a half inches, and two feet from top to bottom — the space between the pickets as they stand is at top about two to three inches.

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No cross-examination.

Anson H. Delemater — Know Mr. Fitch, and the premises where he lives — I have examined the fences around his yard — that on the east and south is the same as this in court, and of the same color. I examined on the south side with a view of ascertaining if any of the pickets were loose or broken — last week I examined — I commenced on the south side and traced the fence to the west — near the south-west corner there was one picket not painted, but of similar shape with the rest. I saw no other signs on that side of any picket having been loosened — this was forty-two to fifty paces from south-west corner of the house, and a pace or two from the west corner of the yard; on the east side the space between the house and the fence is about eight feet. I am some acquainted with Filley's Tavern; recollect a piazza on the south side of the house. The piazza is about sixteen feet wide; the lattice of the piazza is as high or a little higher than the window — the lattice extends from the west end to a passage opposite to the door; the window is west of the door. I know Joshua Wells: I had a conversation with him in reference to this prosecution at Wayne, the day previous to the fifth of June, the day on which this cause was resumed.

Question — Did he (Wells) say to you, he was sorry he ever had anything to say to the railroad company or its agents, or that he did not know anything against defendants.

Objected to, on the ground that the proper foundation was not laid.

Argued by Messrs. Frazer, Frink, Seward, and S. A. Goodwin.

Court — The question is, was the mind of the witness (Wells) called to the particular conversation? I am of opinion it was, and therefore admit the question.

Witness — Wells did not, as I remember, say he was sorry he had anything to say to the railroad company or its agents. He said he did n't know of anything Fitch had done. He told me he did not know of anything against Mr. Fitch; also that he wished himself dead a thousand times before he got into the scrape. He also told me he never heard Fitch say anything that was not said open and above-board.

The day before last Christmas day, Fitch, and his wife and daughter, came to my house about noon, and remained until the afternoon of the day after Christmas day. I then lived nine miles south of Fitch, but it is twelve miles by the traveled road.

Cross-examined — I think I was not in the court when Wells testified. I was in part of the time, when he was giving his testimony. Am pretty sure I was not in while he testified in reference to his conversation with me. I have been in town nearly half the time since the trial commenced. Have been here to assist defendants in anything they wanted me to do. Have been frequently at the jail, and some in the country, to ascertain about witnesses, &c.

I commenced the conversation with Wells; I wanted to find out what he would swear to, I heard he was going to swear to a good deal, and wanted to see if it was so. Have known Fitch seventeen years, and Champlin for some years; know Corwin, and Williams, and Filley also, and have been a number of times at his tavern; a number of times last fall, and a few times last winter. Never visited at Filley's; have called there, when that way on business. Am a surveyor, and have

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surveyed in that town. Knew, and saw Wells, when he worked for Fitch. I never before approached Wells on this subject, or sent any one to him. The conversation between me and Wells did not last five minutes, only while the cars stopped at the station — I think Wayne.

I have not been employed by defendants; I have given my assistance voluntarily; I have spent much of my time in rendering it.

Re-examined — I had a conversation with Fitch a little south of his house on the track, about putting of wedges on the track; think Wells was there, not certain; some others were present.

Mr. Frazer objected to giving this conversation, as it is not identified as being the same conversation testified to by Wells.

Argued by Frazer, Seward, Frink, and Van Arman.

Court — It is not yet identified as the same conversation.

Witness — My conversation with Fitch was in day time, soon after the cars had been thrown off at Marshall, in the summer of 1849. There were three or four others present; think Wells was present also; think Filley was, but not certain; no recollection if Laycock was.

To Van Arman.—It was within a few days after I heard of the accident at Marshall; cannot tell the season or the year; can't say if it was '48 or '49—think '49. Don't know if Wells then lived at the Centre. I think it was in the fall, spring, or summer—can't say which of the three—but don't think it was in the winter. My impression is stronger as to Wells being there, than Filley.

Court — I don't think it is sufficiently identified as the same conversation ; the witness do n't state positively who was present. The subject matter is not sufficiently identified, as the same matter appears to have been a constant subject of conversation.

Peter C. Kevan — Reside in Mackinac, since May, 1843. Have been county clerk and deputy clerk, also clerk for Biddle & Drew, and latterly in business for myself. In '45 was first-deputy clerk, and have remained in that office ever since. Am now county clerk. I know Wm. D. Westcott; Dr. J. D. Rankin, who resided in Mackinac when I went there — he left there in '44 or '45.

Van Arman — Objects to the witness stating where Rankin went, or his cause of leaving, unless he knew of his own knowledge.

Witness —When he left Mackinac, I saw him on the steamer; he then had a rose cancer on his eye, and I knew he was in feeble health. He never returned. I knew he was in bad health. It is understood and reported that he was dead. It was so reported in Mackinac a few months after he left.

Mr. Seward — Is there any indictment on the files in your office against Rankin for perjury?

Witness —There is not, and never was.

Cross-examined —There was a complaint for perjury, and an investigation before the grand jury, but no indictment found, against Rankin.

Re-examined —Was deputy clerk when the indictment *vs.* Westcott was nolle prossed. Do n't know if it was before or after Rankin's death — think after, and that was the reason why it was nolle prossed.

James Peeler — Reside in Grass Lake, about four miles south-east of the depot, also south-east of Cady's about two miles—resided there last April. I know Henry Phelps. In April, (from the 10th to the 15th)

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I saw him about a mile north-east of Cady's—he was then going south. Harvey Kellogg was with me. I was going to Grass Lake depot. There was a man with Phelps, who I did not know. They were in a one-horse wagon and buggy. I saw Phelps in the morning, not later than ten o'clock. I saw there was something in the shape of a box in the buggy, tied up in something red. It sat in the hind part, nearly under the seat. The thing I saw was twelve to fourteen inches long, and seven or eight wide. Can't say how deep, but judge about seven or eight inches. As they came along, Phelps said good morning to Kellogg; and Kellogg asked him if he was not lost. Phelps said, "Oh no, he was well acquainted up there." After they passed, I asked Kellogg if he could tell what was in the box. Kellogg said "No; but by God! he believed it was full of counterfeit money." Phelps did not stop, but, as he passed brought his horse to a slow walk. I had a team, and was taking timber to the depot. During that month I only met Phelps once in that neighborhood. He was going in the direction of Cady's. I that day stayed at the depot till about twelve o'clock, and returned by the same road I went. I did not again, that day, see either Phelps or the man who was with him. I was bringing the timber to Hale, at Grass Lake — delivered two sticks to him that week. It was the day I delivered the first stick to Hale that I saw Phelps. I afterwards understood that he was at Cady's that day, to trade horses.

Van Arman, (for the prosecution.) — Asks that the cross-examination of this witness may be postponed until after Kellogg has been examined, the public prosecutor deeming that this course is essential for the ends of justice, and it being entirely in the discretion of the court.

Mr. Seward — Would prefer that the examination should now proceed.

Court — The object is to get at the truth, and much reliance must be placed on the statements of the public prosecutor, made under his oath of office. Under his statement, I must presume it necessary; and as it cannot at all affect the interest of the defendants, (for if the witness is a true one, he will swear the same again as now,) I will suffer the cross-examination to be postponed.

Mr. Seward — Asks to note an exception to the decision.

Gager Cady — Resides in the town of Grass Lake, about one mile east, and two miles south of the depot, about two miles south of Grass Lake Centre. I know H. Phelps by sight. He was at my house near the middle of last April; I think there was a person with him whom I never saw before. If I saw that person now, I might know him. Phelps was not there, that I know of, but once in that month. He came about a horse I had; I was at my barn when he came, and Phelps and the other man came to me, near the barn. I had my team harnessed, and I drove up to the road. Phelps had a one-horse wagon, which was hitched on the side of the road. I came out into the road, about twenty feet from his buggy, and stopped to fix something in my wagon. I then drove north, nearly past his wagon, and stopped. My impression is there was something in the wagon, about a foot long, and six inches wide, and six inches deep, tied up in a reddish handkerchief — a bundle like — it was under the hind part of the seat. His horse faced to the south, and mine to the north; he was on the side, and I in the middle

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of the road, and about fifteen feet apart; he was there only a few minutes, and we made no trade. Can't recollect positively, but it was, I think, in the forepart of the day. He and the other man went south In going to Michigan Centre, they would go near a mile south before turning on the direct road to Michigan Centre. Don't recollect seeing Phelps in that neighborhood during the spring, save this time. Mr. Peeler lives south-east of me, and going from his house to Grass Lake Centre, would pass on that road. Do n't recollect seeing Peeler that day. The road from my house to Grass Lake Centre, runs north — going to Grass Lake depot, would go about a mile on the road before turning. I was in a great hurry, and did not take particular notice of the man who was with him.

Witness proves a plan of the roads shown, to be correct.

July 10th, P. M.

G. Cady— to Frink — Phelps had a whitish gray horse: I can't state the kind of buggy, did not notice.

Cross-examined — Have known Phelps two or three years: I never was at his house, nor he at mine that I know, save the time I have mentioned. It was not rainy the day he was at my house, for I went after a load of lime that day to Nutting's near Francisco station. Nutting was at home, and I got the lime. I got home about the middle of the afternoon. Am sure I went after the lime the same day, after I saw Phelps. Do n't know which way Phelps came from; first saw him near the barn; no one was with me save my little boys, one eight and the other twelve years old. I do n't remember if, when he came, I had my horse out of the stable. He may have been there altogether half an hour. I had a horse looked like the one he had: I think I spoke to Phelps about the lime, and asked him if he knew if any was burned; think it was about eight or nine, A. M. when he was there. Can't state if his horse was hitched, but it was near a post for hitching. Can't state if it was a wagon or buggy he had, nor the color of it, nor if it had springs. I think it had but one seat: do n't know which of them drove when they went off: can't state the day of the month. I saw nothing put in, or taken out of buggy. Think Phelps had on a cap: can't say what the other had, or how they were dressed; nor if either had on an overcoat. They looked at mine, and I at his horse. All I can say about the other man is, he was a little taller than Phelps. Can't say positively that there was anything in the wagon: can 't say if I saw any straw or hay in the wagon: did not look into it, positively: do n't know if there was an overcoat on seat or under seat. It came into my mind when Mr. Jefferson Corwin asked me if I saw a bundle in the wagon, but can't now be certain I did. It was last Tuesday week, Corwin asked me: that was the first time I was spoken to about it: since then, I have heard a good deal. Mr. Higby came to my house, and talked to me about it; Mr. Frink and Mr. Farrand also spoke to me about it. It was on the 4th of July Farrand spoke to me about it. I also spoke to Mr. Livermore about it. I told him I could not speak

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positively about it. My recollection is now the same as it was at first. Think the bundle was reddish, if I saw one at all. I have no further recollection about it. It may have been anything else as well as a handkerchief. I have no impression as to whether it was the shape of a box or a bundle, or whether round or not. Do not know whether I heard of it being shown, that defendants had given Phelps a box or match, until I was spoken to. I supposed it was a bundle belonging to the man with him — that was my idea before I heard of a box. It might be an overcoat. I don't know if there was anything else in the buggy. Was in a hurry, and did not take much notice; there was nothing to call my attention to it. I think I told Mr. Livermore that if the question came up, was there or not anything in the buggy, I could not answer positively.

To Frink — When you and Higby spoke to me, neither suggested or spoke of a red kerchief.

To Mr. Van Arman — Peeler lives about two miles from me. He said he came from Detroit, but I don't know. He carries on a farm; don't know who owns it.

Czar Jones — Reside in Detroit. Was in Detroit 18th of November last, and then boarded at Johnson's Hotel, opposite the railroad depot. I remember of the occurrence of the burning of the depot; that night was at Johnson's Hotel. I think the fire broke out about two A. M. I was in room eighty-four; the fire appeared to be near the center cupola, but nearer the hotel than the cupola, and in the roof. My attention was first attracted by the fire shining in through the window of my room. When it so shone in, I arose, dressed, and took an observation from my window. I then went and looked from the upper hall of the house, from there I could see where the fire was. When I first saw it, it appeared to be a flame, two or three feet high, out of the scuttle nearest the cupola. When I got to the upper hall the flame had increased some, and a black smoke issued from the cupola. My impression is, when I first saw the fire, it had not reached the cupola. I could not, when I first saw the fire, see the whole of the cupola — it appeared near to it, but I saw no fire in the cupola. Don't remember if I saw any reflection, at first, of fire on the window of cupola. At the time I first saw the fire, heard no alarm, but did soon after, from the street. Can't tell what part of the street; can't tell if alarm was from the street toward the window. A black smoke in the cupola, when I got to the upper hall. I think the fire was a little to one side, from a line from where I was to the cupola, and toward the passenger depot. The hall is on the third story. I did not go to bed after I first got up. I went down into the street, and returned back into the house. After I saw it, the fire made rapid progress.

I was in Detroit from the 1st to the 20th February last, and was boarding at Johnson's Hotel. I saw Fitch at the hotel, about from 11th to 15th of February. Think I saw him in the morning after he arrived. Can not state the day of the week I saw him. I usually look at the register. At that time the cars arrived about seven P. M. The first day after I saw Fitch, he was with me most of the day. We started from the hotel together, about nine A. M., and went first to Couse's music store — went to assist them in selecting a melodeon. We stayed some

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time in the music room, perhaps an hour, or more or less, I judge about half an hour. From thence we went to Martin's daguerrean gallery, and stayed there about an hour. Thence, my impression is, we went to the Biddle House, to look at the house, and examine the gas works; and from thence, I think, back to Johnson's Hotel to early dinner, about half-past eleven. After dinner, went to Brady's warehouse: went to show him a seraphim I owned, for the purpose of selling it to him. Can't say how long we remained there. Thence we went, I think, to the post office, though we may have first gone to Kelley's jewelry shop. I am not sure that we went to both places — think we went to Kelley's. We spent some time looking at a Chinese juggler. We went back to Johnson's to tea; either before tea or dinner, held a religious discussion. Do n't know how soon after we got back we had tea: my impression is that when I got back I went to my room, and next saw Fitch at the tea-table. I do n't remember when Fitch left the city. I think he was four or five days in the city. My impression is, that he was usually at meals during the entire time he remained in town. I think I went with him to a fair; my impression is, it was not in the evening, but in the forenoon of the second day of the fair; think the fair was in the Firemen's Hall, and that we remained but a short time. Do n't remember, but think I was not with him at the fair in the evening. I think Holden was present when we had the discussion I spoke of. It was in the ladies' room at the hotel, and either before dinner or tea. My impression is, I saw Holden the day before. I know George W. Brown, of Union City. I think I saw Brown after and before the day of the discussion; he, also, stopped at Johnson's.

Cross-examined—At the time of the fire I occupied room No. 84; I have been in that room since. I was in it last week. I think the old and new depot stand nearly in the same place. My recollection is, that from that room I could see the old depot better than the new one. Don't remember that I could, from the room, see any of the windows of the old cupola. When I saw the flame, it was a little right of a right line between me and the centre of the cupola. I think I could see the centre of the cupola where I was. Think there was a window in the cupola next the passenger depot; could not see this or the window of the scuttle, whence I supposed the flame to proceed, from where I was. I hurried on my clothes as fast as I could, and went to the window of the upper hall—that window is to the right of, and above the window of my room; I could get a better view from that hall. When I went into the hall, smoke, but no flame, was in the cupola. Think I could see some, but not all the windows of the cupola, from the hall; have been there since to ascertain; can from them see the window toward the passenger depot. Not a great deal of light about the building when I got to the hall, I could not see the windows of the cupola next the river. From the hall window I could see the windows of the sky-lights; while I was at the hall window, fire burst out of several of the scuttle windows; I stayed at the hall window about five minutes. No fire company arrived, but think alarm was given before I went to the hall; from the hall I went down to the office, and then into the street. My impression is, I did not go nearer the fire than about the hotel.

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My impression is, that the day I spoke of I spent most of the day with Fitch. Think that was the second day after the day he arrived. My impression is, that the same day I spent most of the day with him is the same day we went to the fair together. Saw no dancing at the fair. Think it was the second day of the fair. Can't be sure, but think this was the same day I first referred to as spending with him.

To Juror—The hall runs toward the river. Eighty-four is in the third story of the new part, looking toward the river; only one window in the room. By scuttles, I mean windows in the roof. There is an iron shutter to the hall window; it was open; think I could see most of the old cupola from there. Can't see from there as much as I thought I could of the new one. At the time of the fire I looked through the glass. They were just gathering about the depot when I got to the hall.

To W. A. Howard—Think the part of the new depot next to the hotel is higher than the old one.

To Van Arman—My impression is that the increased height would not affect the view of the cupola.

To Van Dyke—After we visited the fair I saw Fitch here for two or three days; that is my impression, but am not certain.

Moses Metcalf—Reside in Sylvan, Washtenaw county. Have resided there seventeen years. Know Henry Phelps. Have known him six or eight years; first became acquainted with him at Sylvan. He resided on my farm—went on to it in November or December, 1848. The house he occupied was about one hundred and fifty rods from my residence. There was a log house and a hovel for a stable; the hovel was about six rods from the log house. He moved away from these premises the fore part of last April, and my son Alfred and his wife went into the house. My son moved in before Phelps got quite moved out. Phelps stabled his horse in the hovel. He kept a horse there most of the winter, and in the spring kept it a while at Burnett's. I saw Heman Lake first at Phelps' house, in February or March; and I afterward saw him round with Phelps. Lake once came to me to borrow some augers, in the latter part of March or 1st of April: I was at home when he asked for them. He said he wanted them to repair a buggy. I lent him two, the largest, and one of the two smallest of the three now shown in court. It was in the fore part of the day he got them. He did not state whose buggy he wanted to repair. Can't say how long he kept them. The size of the augers shown are one-half, five-eighths, and one and a fourth inch augers. Went to his house once to see Phelps, in the spring; the thumb-piece was out, and I knocked. Lake came to the door, and told me that Phelps had gone to his father's, and I followed and overtook Phelps, and did my business with him. Can't state the day of the month my son moved into the house. Never had any white-wood timber on these premises; there was none grown on the premises. A road ran from my house to that occupied by Phelps. I have been on the premises lately with persons who came to search for something, and the piece of timber now produced was found in the hovel on the 1st day of July. Dr. Lappin, Mr. Fenn, A. Metcalf, H. Metcalf and myself were present when it was found. Lappin and Fenn came to the premises and said they wanted to search the premises: they imagined there was something there they wanted to

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find, and wanted a pitchfork to turn up some hay in the hovel. My son called to me to bring the fork; I brought it and handed it to Fenn, who went to overhauling the hay in the crib. He began at the east end, and, when he got to about the middle, the fork struck some timber, and he said to the Doctor, he guessed they had found what they wanted, and they took out the piece of timber now in court. I put a mark on the timber. They said it would have to go to Detroit, and I too, so I marked it.

Witness here recognized the mark he put on the timber.

There were about twelve or eighteen inches of hay, marsh hay, over the timber, it was hay that I supposed was brought there by Phelps, The crib, where it was found, was used for feeding horses; there might be some moist hay directly on the ground, but most of it was dry hay. Phelps and Lake remained at my house on the 10th or 11th of April; don't remember if at that time my son had moved into the house. When he borrowed the augers, Lake didn't state how the buggy was broken. I did not know of Lake having a buggy, but Phelps had one. Phelps was alone there at the time.

Cross-examined.— I measured the augers: I don't know how many augers I had at the time: I don't recollect that Lake did not at first know which auger to take; but I may have said to him, to take more than one. Phelps lived in the house at the time Lake borrowed the augers. It was before the day I knocked at the door that the augers were borrowed. I did not notice that he took his wife to the cars the day Lake borrowed the augers — he went and came a good deal and I never watched him: don't know when the augers were returned, or if they were returned the same day they were borrowed. My impression is, that Phelps moved out of the house, and my son in, the last of March or first week of April. The day Lappin and Fenn came, I only saw them search the hovel; before going into the hovel, they asked me if I had seen any white wood around the premises. At that time the manger was perhaps half full of hay. They seemed strongly impressed they would find something, When he got the fork Fenn went right to the manger and in a few minutes found the timber. As soon as the fork struck, he said to the Doctor, I guess we have found it, and he drew it out. I did not see what it was when he spoke. I guess he did not search much after. Mr. Fenn lives in Sylvan, perhaps two miles and a half from me. I think Phelps had moved out, and my son in, before the night he and Lake slept at my house. The house Phelps lived in is about half a mile south of the railroad, and Reynolds lives between that and the railroad. Phelps and Lake came to my house on the 10th, toward tea-time and staid all night. Do n't know if Phelps went up in the morning to the house formerly occupied by him. Do n't know if I saw them start in the morning. I think the hay was mostly dry, but, when the timber was taken out, the under side was moist; the first I saw of the stick it was perpendicular in Fenn's hand. I think, from the appearance of the stick, one end had more hay under it than the other. There is a stick taken out of the side of the hovel, over the crib. The hole is about a foot through.

The day the thumb-piece was gone, Lake came to the door and told me Phelps must be almost half-way to the old gent.'s and I halloed after

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Phelps. Lake opened the door about a foot — enough to put his head well out — I did n't ask or want to go in. Think this was after the augers were borrowed, but am not certain.

There is a door in the east end of this hovel — barrels and hen-roost in the hovel — nothing valuable kept in there — any one might go in there at night.

Sam'l P. Mead — Last fall lived in Brighton, Livingston county. I knew G. W. Gay. I purchased, about 1st Sept., a wheat note of Gay, calling for one hundred bushels. I gave him sixty-two dollars and fifty cents for the note, in money. At the time I purchased it, I paid him twelve or fifteen dollars, and, in about three weeks or a month after, the balance. This note was against B. M———.

The son of Gay had a note against Calvin Goodsfield, payable to his father, for fifty dollars. This son is about eighteen years of age — have heard this son called Geurilla.

To Van Arman — At time I paid him, Gay said he had to pay for land in Washtenaw county.

Court adjourned till 11th, at 10, A. M.

July 11, 1851, A. M.

Dr. Harlow Lappin — I reside at Silvan Centre, Washtenaw county. Have known Phelps two years. My residence is about two miles from Metcalf's. I have once been on the premises occupied by Phelps. I went to make a search there the first of this month. Mr. Fenn was with me. The premises are owned by Metcalf, but were occupied lately by Phelps. First we went to the clover field, where old Metcalf and his son Henry were; they afterward went up to the barn with us. We went to the summer fallow where A. Metcalf was. Fenn and A. Metcalf went with me to the stable. Fenn and I went into the stable and looked through it and came out. We had a pitchfork procured, through the agency of which Fenn moved the hay from the manger and found the stick in court. The manger is sixteen or twenty feet long, and three or four feet wide. Fenn commenced to move the hay at the east end, and progressed to about the centre, when he found the stick: the hay was about eighteen inches deep. The hay appeared to be dense and compact. The surface was wet. I discovered on the top of the hay something that appeared to be manure — took off my glove to insert my hand, but did not in consequence of the manure. One side of the stick was wet — there was decomposed hay in the manger.

Question — Had the hay the appearance of being there some time?

Objected to, and withdrawn.

The hay appeared wet at the top and at the bottom. Can't state if there was a floor under the manger, but conclude there was not, as there was none on the rest of the stable. When the block was taken out it was moist, and a portion of the decomposed hay adhered to it about the middle of the block. The hovel was of logs covered with straw. I recognize the three augers now in court, I saw them first at Metcalf's. They and the timber were brought to my place. I marked the timber, and now recognize it, and my mark. After it was found, on the 2d of

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July, I delivered it to Mr. Higby and the son of Mr. Burnett. Besides the stable, we searched the woods west of the house and hovel, where there was an old threshing machine. We made a thorough search. Did not search any second place before going in the stable. None of the Metcalfs were with Fenn and I in the woods. We arrived at the premises about from nine to eleven A. M., and got through in about half or three-quarters of an hour. We went into the stable first and made a superficial examination, then went to the woods, and came back to the stable.

Cross-examined— In March, '48, I went to Sylvan from Wayne. Had resided one year in Wayne county. Once lived in Barry county, lived there last, three or four years ago; my father's family live there now. In Barry county I lived in Johnstown first. I practise medicine. I pursue the eclectic system; I studied partly at my father's; he ministers to the maladies of the soul. Was out on a tour among my patients when I made this discovery. Started from Sylvan with Fenn, who also lives at the Centre. Went at the solicitation of defendant Burnett, who saw me at Grass Lake the last day of June. Fenn went with me at my request. I have not looked up witnesses or busied myself about this case; am quite neutral in my feelings and acts. Searched no further then after we found the stick, but after we returned from Grass Lake made a further search, but found nothing. We looked around the house and hovel for shavings; the second examination was on the same day. Can't say we went into the barn the second time; think in the stable there were poles for hens to roost on. We saw the threshing machine in the woods, and went to search; the cylinder and frame are still there. Think I examined it close enough to know it was not white wood. Can not now say positively that it was not white-wood. It was painted, I think, but can't state the color. We both said it was not white-wood at the time; we did not cut it. The timbers of the threshing power were about as large as the one in court, and from three to six feet long, and, as far as I can recollect, were fastened or attached all together. Recollect seeing the cylinder in particular; it was twenty inches through and two or three feet long, with iron cogs, but can't tell if it was itself wood or iron. The cogs were along the whole length. Can't say if it was hollow or solid. The threshing power was dilapidated, and some of it was gone I think. Can't say if the irons remained on the power. Can't say positively that we went up to it, but we went close to it. Do n't know if there was straw round it. Before we left the stable the first time, we proposed to move the hay, and A. Metcalf said he would go for a fork, and we went to the woods and returned about the time he got back with the fork. After Fenn got the stick, he examined the rest of the manger, and pitched out all the hay. Am as sure of this as of anything else. It was the first time we were at the stable I took off my glove. It was by appearance, I saw the hay was drier in the centre. Am pretty sure he threw all the hay out. I did not examine the hay under the stick. Stood at the door when the search was made. After we came back from Grass Lake, went into the stable and looked at the hay in the bottom of the manger. When Fenn found the stick, think he did not say to me he had found what he wanted. The last time I was in the barn, think Fenn was not with me.

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To Mr. Seward — My father is a Quaker preacher. I am thirty-two years of age. I practice on the eclectic system — which is to select the best remedies from all other systems. I have never been in state prison; never dressed in disguise to get information — or given advice in this case. Merely went to search at the solicitation of Burnett; he is not a neighbor, but presume he is a friend — lives eight or ten miles from me.

Question — What did Burnett say, when he asked you to go and search?

Answer — He said he believed Henry Phelps made the match, and he thought he could see him exhibited in it, and he requested me to inquire if he had ever borrowed augers of five-eighth and one-quarter inch — and also to search the premises where he lived, and enjoined me to be very particular in the search; there were no other overtures than I have mentioned, made by Burnett.

To Van Arman — Question — Who was present at these solicitations and overtures?

Objected to — objection overruled.

Witness — There was no person present, it was east of the south side of the street, opposite Hale & Smith's store. Burnett called me there out of Allen's grocery. It was in the day time, and the first day of July.

To Seward — On the first day of July, and the day before I searched, that Burnett asked me to make the search. I saw Burnett the last day of June, it was by mistake I said the first of July.

To Van Arman — There was no arrangement for Higby, or any one, to meet me at Metcalf's.

To Juror — Burnett and I were in the grocery when he called me out.

Mr. Van Arman here suggests that, in reference to the testimony of Jones, he will request that the jury be taken to view the windows referred to by him, as he thinks the particular localities described by him could not be seen from the windows he mentioned.

Mr. Seward says there will be some further evidence on that point, and after it is given, he will gladly assent to the view.

Andrew Fenn — Have resided in Sylvan eight years; knew Phelps previous to April; he lived in Sylvan on the premises of Metcalf. I went to these premises on the first of July with Dr. Lappin, between nine and eleven A. M.— I went to see if any white-wood timber could be found on the premises, or in the neighborhood, and if he, Phelps, had borrowed augers from any of his neighbors. I found the white-wood stick now in court, in a hovel, six or eight rods from the house formerly occupied by Phelps. I marked the stick when I found it, and recognize the mark. I found it about the middle of the manger, under the hay — the manger was about two feet high, and about one and a half or two feet wide — the hay was weather-beaten on the top, and appeared to have lain there some time; there was considerable hen manure on the top of the hay all along. The hay was some wet at the top. I commenced at the east end, and removed the hay clear to the bottom, about half way, and then found the stick, handed it to Lappin, and then continued my search all through to the other end of the manger: one end of the stick was lower than the other, and within about six inches of the bottom. About sixteen or eighteen inches over the stick, hay seemed all one kind; the bottom hay below the block was wet,

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over it it was dry, till near the top, where it was also wet; about one-half of the lower end of the block was quite wet, and some hay adhered to it; no floor in any part of the manger. I searched around the house in the weeds and grass, and on edge of the woods, where there was an old threshing power. Before I moved the hay, I searched about the threshing machine. Three Metcalfs were present when I removed the hay; Lappin was with me in the woods. About one P. M. we went back again to the premises; after we found the stick, we went to Grass Lake, and then returned to the premises. I had no knowledge that led me to the hovel in preference to any other place; after we found the stick, we first went to Allen's grocery; on our return, we went to Metcalf's house, and I there saw the three augers now in court. Metcalf came there to us; I inquired if he had ever lent any such augers — this was when I was first there, and I told him would call for them on my return. They were taken to Lappin's office, and on second July were delivered to Higby. The threshing machine in the woods was mostly made of white-wood, it was painted red; the largest sticks were about four inches through. The cylinder was there, and was covered with iron. I am a carpenter and joiner; I have seen timber like this in court along the railroad; I saw a piece like this about a hundred and twenty rods from Phelps', that was used to make a cattle guard, and was thrown aside. One side of the guard is gone and three sides still there — the piece gone is one side or piece of the guard. There was one piece broken when I saw it last summer, since I have noticed that it, the broken piece, was entirely gone — about three weeks since noticed it was gone.

Cross-examined — Have known Phelps ten or twelve years. Never had any difficulty with him. Was a witness against him in the United States Court. Lappin requested me to go and make the search. We drove up near the corner first, and there saw old Metcalf and his son, then went on to where Alfred Metcalf was. Left our buggy there, and went across to the stable. We looked around outside the stable and where the poles were across overhead, then A. Metcalf went and got a fork, and I searched the manger. After we found the block, searched the manger all through. No hay in the barn, save what was in the manger. The first time we were there three-quarters of an hour, the second time fifteen minutes or so. Only saw the three augers with Metcalf. Lappin did not say any one wanted me to go with him.

There is white-wood in many of the cattle guards. Know two or three places where there are such. Last summer saw one lying where I said, one side broken. Can't say when I last saw the broken part, but it was soon after it was broken. Can't say if I saw it after June, '50. About three weeks since, I noticed the broken piece was gone. Was passing along there, and a man with me said he guessed the broken part was taken for timber by some one. Was going to see Francisco about some collecting for him. I did not go, as H. Francisco told me he was not at home. Overtook this man on the road, he was some one who lived around there. Knew him at the time, but do n't now remember who he was. We were on foot, and went about three-quarters of a mile together. Do not remember any thing else we said. He was not a very old man. Do n't know how he was dressed, or if he is married and has

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a family. Never was at his house — do n't know if he has any house. Was not Sunday. Have not seen that man since. He was one I merely knew by sight. Have had no conversation with any one lately about the cattle guard in particular. Have heard it mentioned that the piece was gone more particularly since the stick in court was found. The guard was split, and I think so as to make two pieces of it. Think it was split about the middle into two pieces. Only noticed it split on one occasion. At this time I was going to Wheeler's to buy hams. Wheeler lives about one or half a mile north of where I saw the guard.

Reynolds lives near where the guard lay. The guard was near the cross-road, within ten or thirty feet of it. Do n't know which side of the crossing it lay; it was east of Francisco's house. There is a small house, partly log, between Francisco's and where the guard lay; the guard was sixty to eighty rods east of this house. I was alone, going north; crossed over at Reynold's crossing, and there close to that crossing it lay. It was white-wood; I had not seen any there before, and that drew my attention to it; think there was a second there. Both sides of this broken guard were white-wood; do n't know if the second guard was white-wood. I rather think the middle pieces were of oak. The broken side lay in two pieces, separated from the rest. There was no person with me when I first saw it; it was three weeks ago that the man said it must have been broken in throwing it from the cars. At this time, all, save the broken piece, still lay there.

The hay in the manger had the appearance of having been pricked over by a horse. I do n't recollect, but think the fork struck a stick. I remarked to the Doctor: "Here is something," or "I guess I have found it," or something of that sort. I may have said: "I think we have found the very stick." I meant the stick Lappin had been speaking of that morning. I saw Burnett when I was down at the United States Court, and next on the 3d of July. Did not see him when he was out home; did not see Higby till he came after the stick and augers. Do n't know Billings; know Delemater and H. Hocum; have not seen either of them till I came into town. Have known Mr. Frink, and, since I came in, had a conversation with him — yesterday morning and this morning, just before I came on the stand, and while Lappin was on the stand.

I think there are cattle guards now set at Reynold's crossing.

To a Juror—The broken piece was made of stuff about five inches thick and eighteen or twenty wide, and sixteen or eighteen feet long, and it was split from end to end in two. I can't say if they were quite separated. The piece in court could be taken from one of the split pieces. The roof of the hovel was hay or straw: think under heavy rain it would break through. I live about five miles from Francisco. Can't say what hour I left home that day. I noticed the piece gone; met the man near the crossing; don't know what hour I got to Francisco's, or the time I returned.

To Stuart — When I noticed the piece gone, think there was a new guard put up. I have not passed there over four times in a year. I had not been along there before three weeks ago since last summer. I did not measure the broken one, nor take particular notice of it — I merely saw it, as I passed along,

To Juror — Think there was no door to the hovel entrance — it was

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open all the time; also a log out over the manger, leaving a space of ten or twelve inches in depth.

To Van Dyke — Should think, if used after being split, the piece would rot quicker. Did not notice any injury to it save being split through the centre. Have now and then attended to unimportant suits.

To Seward — I have been constable for two years. From practice, I can, by the eye, tell the size of timber pretty closely. The court table is about two feet eight inches wide, and about one inch thick.

What did you swear to against Phelps in the United States court.

Objected to by Van Dyke.

Objection sustained, and exception taken.

I was requested to attend to a suit between Burnet and Phelps, and did so. When Lappin asked me to go and search, he said from what Burnett had said, he believed we should find such a stick, and that we were to find out if such wood could be found, or if he, Phelps had ever borrowed augers of half and five-fourth inch sizes. One end of the stick now in court appears as if it had been morticed for a cattle guard. I never measured the stick in court, or saw it measured, save by the hand. I judge it to be about five inches thick.

Here the witness measured it, and finds it four and seven-eighth inches.

To Van Dyke — I have often noticed the morticing of the cattle guards; there are eight mortices in each side-piece of the cattle guards.

AFTERNOON SESSION.

Mr. Fenn recalled — About three weeks ago saw the balance of the guard, save the two split pieces. The cross pieces and all the rest of it were there.

Samuel G. Stow — Reside in town of Grass Lake, half a mile south of Francisco Station. Commenced opposite Sylvan Centre, and put in most of the cattle guards up to Grass Lake Centre — there were a few already in; this was in May, 1850. Most of side-pieces were of white-wood, the cross-pieces oak. Side-pieces about five inches thick, eighteen inches wide, and twenty feet long. They were delivered me on the spot, ready framed and fit for putting in. There were several of them broken and split, and new pieces left to supply their places. Know Reynold's crossing. Believe there was a new piece left there. They were, I believe, brought from the east. Can't state what time in May I put them in.

Cross-examined — Live now within two miles of Reynold's crossing. Mr. Robinson employed me to put them in. Put in eleven, and took out one at Francisco's, and put a new one in. Can't say how many of them had new pieces in — there were some new pieces that were not put in, as I thought the injured pieces were just as good, or would last well enough. Can't say, if at Reynold's crossing I put in a new piece, or left the old one in and the new one lying there. The guard at Reynold's is about a mile east of Francisco's — that was the last guard I put in. Presume I consulted Robinson as to whether I should then put in the new one, or let the old piece stand. Think I finished the job in May. Left a new piece at Knight's crossing. Left a broken piece at Wood's

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crossing, half a mile west of Francisco's. Left either a new or an old piece at Reynold's crossing, I think, but can't tell which. If I put the old one in, one side-piece would be left, either a new or broken side-piece would be left there, but no more of the guard — the rest would be in. I have not noticed that guard since. Have been past there since, and noticed no pieces there.

To Seward (the piece of wood produced being shown) — Witness says the thickness and kind of lumber is near as might be to the sides used in the guards, and the mortice mark also corresponds with what was on the guards.

Alfred Metcalf — Reside at Sylvan, Washtenaw county. With the exception of two and a half years I lived at Grass Lake; have lived there seventeen years. Am son to Moses Metcalf. Know Phelps, and have known him for the last seven years. For one and a quarter years previous to April last, he resided on my father's premises, eighty or a hundred rods from my father's house, during which time I resided in Grass Lake. On the second of November last I moved into my father's house, and made my home there till the 12th of April, and then moved into the house theretofore occupied by Phelps. Was down at Phelps' house the latter part of the third week in March, and he spoke of getting an auger, or that he wanted one, and he asked me if we had a half-inch one. Told him I thought father had one about that size. He said he wanted it to repair his buggy. I know he at the time had a one-horse buggy with four springs — this was in the forenoon. Think I passed his buggy that day and did not notice that it was broken. Think that day he and I went over to the railroad together. Think he offered to go over with me, to look at a piece of ground he was going to take the surface off as a job. Think that day I saw Lake at Phelps', but Lake did not go with us. Can't state positively, but think that Mrs. Phelps was not at home that day. His was a log house; there is also a small log hovel about five or seven rods north of the house. There is no road in front of the house. The railroad is north, the state road south of the house. The hovel stood between the railroad and the house. On 12th April, when I moved in, some of Phelps' things were still there, and some of them are there yet. Do n't recollect that he moved anything away since I moved in.

There was a block of timber found there on the 1st of July; it is the same now produced; those present when it was found are Lappin, Fenn, my father, brother, and myself; it was found in the hay, in a manger in the hovel. There was a log out over the manger, and that left a space of fifteen inches or so wide, and about ten feet long. At the request of either Lappin or Fenn, I think Fenn, I attended with them at the hovel, to see them make the search. They first went to the stable, and we went in, and I remarked to them that the hay in the manger had never been moved since I came there, to my knowledge. A fork was obtained, and Fenn commenced, at the east end of the manger, pitching the hay out. He proceeded to about a little past the middle, when the fork came in contact with a stick of wood, and then Fenn took it out; the stick was mainly dry, but one side and one end was quite wet, and some hay in a decomposed state adhered to it. I think Fenn then proceeded till he got all or nearly all the hay out; part of the hay was wet, and a part dry;

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at the bottom the hay was moist; the stable leaked badly. I believe that the hay was in the manger when I moved on to the premises. The hay was in a decayed, worthless state; saw it when I moved on the premises, and was often in the stable, and knew of no changes save what was made by myself. I kept hens, and they roosted in the hovel. There was hen manure on the hay in the manger; the manger was three to three and a half feet deep, and in some places full, in other parts not; the hovel was only used by me. Had no hired man, and no one living with me but my wife. When we went there it appeared as if hay had been put in through the log hole. I at first piled the hay up, and afterward put it back in the manger; this was the only way I interfered with the hay after I went there; when the stick was found the hay was apparently settled. The house is about one hundred and forty or one hundred and fifty rods from Reynold's crossing. Remember about the 10th of April, Lake and Phelps stayed one night at my father's; they came there on foot. Do n't know where they left their horse and buggy, if they had one. Do n't know in what direction they went when they left next morning. Do n't know that Phelps ever brought hay there, but a month before I moved there, saw his horse there; it was in the last of March, or fore part of April, that Phelps moved his family out. The same day he inquired of me about augers; I heard Phelps ask Lake go and get them. Do n't think he said to Lake what he wanted them for. I fix the date of this by knowing that my school was closed on Saturday of the previous week, which was the 16th.

Cross-examined.—The augers were borrowed after I closed my school; this has always been by recollection; remember when Van Arman, Livermore, Clark, Holden and Farren were with me about this, I did not tell Van Arman that I could n't remember anything of the time, save that I was then going to my school. This conversation was last Sunday; think Van Arman asked me what he wanted the augers for, and that I told him he said to mend a buggy, and that I thought it strange he should want augers to mend a buggy; did not say that I knew one of the buggy springs was broken; think I saw a spring broken, but did n't know if it was still unmended; did not in direct terms say I looked to see if buggy was broken, or that I saw the spring was still broken, but may have used language that that construction may be put on.

I am certain I moved in on the 12th April — after Phelps left, and within a week after. The first thing I did was about shingles, and while I was working at them, Phelps was there to take away his trunk, but I considered he had moved — it was three to six or seven days after this that he spent a night at my father's. I was at my father's the morning he left there, after staying all night; do n't remember being at Reynolds' that morning. He (Phelps) came up to the house where I now live, before dinner, and I went down to father's with him the time he stayed all night; do n't remember that that day Phelps went back to the house where I live. Think he borrowed a shovel, and went grading that afternoon.

Do n't know if Lake was present the time Phelps asked me about the augers; Phelps may or may not have gone off in his buggy that day, can't say. Do n't recollect going to the post office that morning. Phelps and I went over to railroad, and afterward went to Reynolds'; think,

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when we got there Reynolds was cutting up turneps. Did not tell Van Arman the time referred to, that Phelps was in a great hurry going away. It is my impression that Phelps once told me he was going to Niles, and I wanted to send a message to my aunt. Have no recollection that Phelps told me that day he was in a hurry, or wanted to mend the buggy for the purpose of taking his wife's things to the railroad. Remember Phelps once telling me he had returned from Niles, and my aunt was married. Think this was before he spoke of the augers. Think so because I think my school was not closed when he so told me. Did not tell Van Arman that I noticed a spring was broken that day; may have admitted a spring might be broken without my seeing it. Remember Van Arman did ask me if there were springs to the buggy at that time, and that I told him there were; I now t ink there were springs to it, but can't state if they were broken.

Before this, I knew the springs were broken. Think I saw the buggy after this day. Have no recollection of seeing it when springs were out and blocks of wood substituted. Recollect Charles Millard and myself getting off the cars at Francisco's. Do n't remember that Phelps got on that day. This was not the day Phelps spoke of the augers, but it was about the time; can't state whether it was before or after. I think the asking for the augers, and the arrival of Millard, were both after I closed my school, but I can't state which was first. Phelps told me he took a job of grading from Mr. White, and the borrowing of the augers was afterward. I called one Sunday to see Phelps about the grading, and found he was gone away. I can't tell if this was before or after the augers were borrowed. Can't say how many augers father had; he had two that we called half-inch, but one was larger than the other; we often lent them. Do n't remember Phelps borrowing them but once. Some oil, pork, fish, and flour of Phelps' were left at the house, after he moved, by arrangement between us.

D. J. Holden recalled — I came to Detroit the twelfth February, by the cars; the cars got in about dark. On their arrival, I only stopped in the depot to get my valise. I know Fitch. I think I saw him at Johnson's, in the office, immediately after I got into the hotel. I took a room with him that night. I think, after I got my supper I went to Buhl's store, and then went back to Johnson's hotel, and saw Fitch again at the hotel, on my return.

Cross-examined.— I find by the register of the hotel, that I got in on the twelfth. Know it was about that time. I may have been gone half an hour when I went to Buhl's. Fitch, I recollect, was there generally all the evening, after I returned to the hotel. I left Detroit again on the fourteenth. The next day after I came in, just before dinner, I heard a religious discussion between Fitch and another.

Alfred Metcalf, recalled and cross-examined — My school closed the 15th, and I think the augers were borrowed the week after.

I remember, the day before referred to, of speaking to Van Arman about the finding of the stick. Do n't know that I told him they went straight to the manger of their own accord. Do n't think I did. When Fenn first struck the stick with his fork, do n't remember that he did, and I do n't remember that I said to Van Arman that when he so struck it, he said to the Doctor he had found what he wanted, and that at the

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time he said so I had n't seen the stick, and did n't know if he had. I do n't now recollect that Fenn made any such remark. My father was present when it was found. They went away soon after they found it. Do n't remember saying to Van Arman, that they went immediately after, and seemed in a hurry. I think I told Van Arman that, at the time Phelps spoke of the augers, the springs were in. I think I did not say to Van Arman that one of the springs was broke at the time. I did not go into the woods with Fenn and the Doctor. They did n't ask me to go. I saw them when within about twenty feet of the stable, on my return. I was then returning from calling my father, with the fork. My father was about sixteen rods off, but I did not go all the way to him. When I went, I left them in the stable — perhaps I was away two or three minutes. While I was on the other side of the house, I was out of sight of the stable. This was for part of the two or three minutes. I did not see them go to the woods. When I returned, I supposed they were in the stable. I was two or four minutes gone. I went about eight rods and back. The threshing machine is about ten rods from the stable. They had not, to my knowledge, searched any place before turning out the hay; before that, they spoke of searching Reynolds', but did not, that I know.

On the day before alluded to, I may have stated to Van Arman that the hay had not been moved. It never was moved, save as I have stated, to my knowledge, after Phelps left. I showed Van Arman and the others where the stick was found. I don't remember taking up some of the wet hay in my hand to show them, or saying that they had boxed up some of it where they had found the stick.

To Mr. Seward — When he left, Phelps left part of a half-barrel of fish — salt fish. Van Arman and the others were at my house on last Sunday. He did not pretend to be a clergyman; he had not a fishing rod or anything to denote he was a fisherman; he came between three and four P. M. on Sunday. Mr. Farrand and Livermore were with him; there were six of them in all. Mr. Clark was also there. They spent about half an hour on the premises. The exercises on this occasion consisted in putting questions to me. Some others asked questions as well as Van Arman. Van Arman repeated some of the questions, which made me suppose they were quizzing. He didn't agree much with me. They went to the stable. Was alone with them. My answers were not reduced to writing that I know. Think Livermore said they came to see where the stick was found. Supposed at first they came from mere curiosity. They came on foot so far as I saw; but saw smoke down at the railroad, and inferred there was a train there; if so, it was a special train, as no regular train comes at that hour. When the stick was found, a fork was procured, as they showed some dislike to put their hands in.

To a Juror—Know nothing of a search being made until they came there to make it. The log taken out over the manger must have been about a foot in diameter. When Lappin and Fenn first came up to me, they said they wanted to search the premises. I said there was some railroad iron there; they said they did n't want that, but they wanted to see if they could find any white-wood. Fenn asked me to get a fork, but did n't ask me to get my father. Have no knowledge of Phelps' getting augers, only he asked me if my father had any, and told Lake to get one.

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Henry Metcalf — Reside at Sylvan; am son to Moses Metcalf. Remember Lake having some augers; it was in the last of March. Saw him pass by the house (my father's) with the augers in his hand; seeing him pass with them is all I know of it; was on the stoop, on the north side, when I saw him; he came from towards the barn.

Was present when the stick produced was found in a manger under the hay, in the log hovel; was, I think, in the stable after Phelps left, before the stick was found; was cleaning away round the stable; the manger was then full of hay. Noticed no change in the hay from the time I first saw it until the time the stick was found. Saw Lappin and Fenn first at the corner near the field; they drove up, and I went up and spoke with them. I afterward went to the stable; I was not at the stable when they first commenced pitching the hay, but got there just before the stick was found.

Cross-examined— I was in the hay field, south of my father's house, when they came up; went to the stable of my own accord.

To a Juror—When the stick was found, Fenn said something to the effect that he found something; do n't remember his words. The augers Lake had were a one and a quarter, a five-eighth, and one-half or three-quarter inch one. I was about twenty feet from Lake when I saw the augers with him. Do n't remember using the augers within a few days after. Have heard lately that matches were found with auger holes, and also heard of the size of the holes. Phelps never on any other occasion borrowed our augers; do n't remember of their being lent to any other neighbors, or when these were returned. Phelps did not, at that time, get a one and a half inch one. Know the one and a quarter inch one by a piece of iron on the handle which I noticed at the time I saw it with Lake. I saw he had two augers.

J. B. Carman—Live in Columbia, Jackson county. Know Joshua Wells; he used to work for me some years ago. Had a conversation with him relative to these defendants, and particularly relative to Fitch, on the 10th May, on the cars.

Did Wells say, unless he had come out and sworn against these defendants he would be where they are now?

He said if he had n't come out for the railroad as he did, he would now be where they (defendants) are.

Cross-examined—He said they called him a spy, and said, "The fact is, Mr Carman, if I had n't come out for the railroad as I did, I would be where they are." I said to him that I understood he was going to swear that Fitch had requested him to shoot one of the engineers. He said it was not so, and he never thought of it. The conversation then dropped for a moment and then was resumed.

The witness was stopped by counsel from giving the balance of the conversation.

Saw Wells twice since the prisoners were arrested. I live about three or four miles from where Wells lived. Know Fitch, Filley, Champlin, and one or two others of defendants, but am not much acquainted about the Centre. None that I know present at the conversation. It was west of Wayne.

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SATURDAY, July 12.

Samuel G. Stow—I think I saw Mr. Lake going into Franciscoville on the 10th of April, in the evening after tea. I was coming out of Franciscoville and going to Phelps'. I went up, about half a mile, to a gravel pit Phelps had told me he had taken for grading for the company. I found Phelps there, and he went with me to Reynolds', and then put his horse up in Reynolds' barn. Lake either overtook us on the way, or joined us at Reynolds'. About sundown, we three left to go to Metcalf's, and going there, passed the house formerly occupied by Phelps. As we got near the latter house, Phelps said he had to stop there a minute, but would be up immediately, as he supposed supper would be waiting. Lake said he also would stop. We all three went to the gate, and Phelps went on to the stable. About the time Phelps got to the stable, Lake started towards the house. I saw Phelps go in at the stable door, and immediately after, I saw him where the log was out, doing something with his hands in the manger. The log was out of the south side; I was on the south-east side of the stable. Could just see him through the hole. Saw his head, arms and shoulders moving over the manger. About that time I started and went up to Mr. Metcalf's. I was there about half an hour when Phelps and Lake came there; they came together. The way I fix the date was, I, that same day, sent my team to Barry, and know the day I so sent them. I can't tell how long before that day it was since I saw Phelps and Lake, but I think I saw them the week before, but can't be certain.

The Tuesday after I saw Phelps, he came up to my house from the railroad. The day I left Phelps and Lake at the house (formerly Phelps') was Thursday.

Cross-examined — My team went to Barry with a load of goods for Mr. Stevenson; it started Thursday, 10th April, and got back the next week. It is by this I fix the date that day. I saw Phelps first at the gravel-pit. He was alone, and when I saw him first, was going down to marsh with a load of surface; he had his horse and cart. Metcalf's is south-east of Phelps' house. I started alone from the latter house, but met some one, I think one of his family, before I got to Metcalf's house. We were all afoot. I saw neither Phelps nor Lake go into the house. Did not see any one about the house. Don't think young Metcalf had then moved in, for his family was that night at his father's. I can't state whether Phelps brought his cart on to Reynolds' from the pit, or not. He worked often at the pit, and I recollect passing up the road with the cart and him, but whether that was this time or not, can't say; at other times he used to stop at his house.

To Seward — I have done jobs for the railroad.

To Van Arman — I can't now be certain whether I put in the new or old piece in the guard at Reynold's crossing. I think there were not, at any one time, two cattle guards, one whole and one broken, lying there. I can't be certain, but I never saw them: there are two guards there, one on each side of the road. The one on the west was put in long before I put in the one on the east side. The west one was in; the east one was brought there, and lay there a month before I put it in, and also a new piece; all that could be left after it was put in would be

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within the old or new piece, whichever was not put in. I put up a fence along there the middle or last of June, and saw no piece there then.

To W. A. Howard — I moved the position of an old guard at Francisco's.

John Delemater — Reside in Jackson. Know Fitch. Saw him at Columbia, at A. M. Delemater's the day before last Christmas-day, a little past noon, about twelve to one o'clock. Hocom and his wife, and Fitch's wife were with him. He left there in the afternoon of the day after Christmas. It is ten miles from Fitch's.

Cross-examined—I came to A. H. Delemater's from Jackson. Did not stop on the way. Left Jackson in the forenoon, about nine o'clock, and got to my brother's at a little past twelve. Fitch and Hocom were then there. I did not go by the Centre. I stayed till two days after Christmas.

Clarence H. Kellogg — Reside in the town of Grass Lake, about four miles south-east of Grass Lake Depot, and about four miles south of Grass Lake Centre, and about two and a half miles south-east of Gager Cady's. Resided there from the 1st day of April. I think I moved there the 2d April. On Friday, the 11th April, Mr. Peeler and I started for Grass Lake Depot. He had along a stick of timber, and we walked; we went directly past Cady's house. I know Phelps. I met him that day between nine and ten A. M., north of Cady's about a mile. He had a one-horse wagon, and a man was in it with him. Did not know the man; and do n't think I would now, if I saw him. When we passed them they were on a walk. Feeler and I passed the time of day, and passed along. I saw something resembling a square form in the back of his buggy, nearly under the seat; it appeared wrapped in a red kerchief, or something reddish. It might be twelve or fourteen inches long, six or eight wide, and six inches deep; the corners appeared square. Owing to its form and size, that thing excited my attention. Peeler and I had at the time made some remark about it. Peeler said to me, "What do you think is in that box?" I said the other man was a stranger, and perhaps he was a musician, and perhaps it belonged to him, and then I added, "Perhaps it is a box of bogus, or tools for making it."

Cross-examined — Lived in Grass Lake since the fore part of April. Have lived in Detroit, near the Grand Circus, nearly a year, in 1849. Came here in the fall of 1845, and remained here till the spring of 1849; lived on Congress-street in the summer of 1846, near the Lutheran church; rented of O. M. Hyde. When my wife died I lived near Grand Circus; boarded with Peeler here after my wife died, near Grand Circus, and rest of the time in a house owned by Mrs. Daly, near Michigan Garden. Boarded with Peeler seven or eight months. Peeler is a married man. I board with him yet. Peeler moved, in March, to Grass Lake, and I followed in June. I am a carpenter, and worked in Detroit for Mr. Newbury on the boats. Worked a few days under La Tourne. I worked on the Michigan, Illinois and Nile. Peeler works Jerry Watson's farm; he is married to the same woman now that he was living with in Detroit.

I was first spoken to, as to what I saw in the wagon, about two weeks ago, by Mr. Frink and another, at the house of Henry Bennett; none present but the three. Do n't know that I have since talked with any one about it, and do n't know but I have. Know Bingham, of Grass

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Lake; have not talked with him about it. Peeler and I have talked it over since I came here; not before, further than to say that probably we would have to go to Detroit. Bingham owns the lease of my house. I did not move on the day the lease specifies, but did within two days after it was drawn. The timber we had that day was got off J. Watson's farm, the one I live on; it was tamarack, squared timber, and was brought to Hale. We hewed both sticks the day before; only delivered one that day. I was not with Peeler when he delivered the second stick. Can't say, but think it was not the next, but some days after, that he delivered the second stick, but am not certain. It was Friday he delivered the first stick. I stayed in Grass Lake till afternoon. Peeler went part of the way home with me; we got home along in the afternoon. We did not carry back any loading that day; passed Cady's both going and coming. We saw Hale that day. The timber was to turn on a wagon trade. Phelps had a gray horse; the wagon he had was a sort of buggy, painted blue, one seat about the middle. Can't say if it was on springs; noticed nothing peculiar about it; no loading in the wagon but the box I speak of. I think there was some hay or straw in it; they may have had a buffalo robe. Phelps was driving. Phelps passed the time of day, the other man did n't speak. Met about a mile and a half from the depot. Think there is only one direct road from Cady's to the depot. A road diverges from the road we were on to Grass Lake Centre; it was between this point and Cady's we met. Can't say if we met any other buggy that day, or if we saw Cady, or met other teams. The occurrence made no impression on my mind until I heard of this trial. The box looked peculiar. I paid no attention to and never thought of it again till I heard of this trial. Can't say it was a kerchief that covered it, or if the covering was all red. Did n't notice a jug. The box didn't appear to be in any way concealed. Can't say if there were great coats in the wagon. Have known Phelps since the summer of 1850. They were on a trot when I first saw them, but pulled into a walk as they passed us. Never had any deal with Phelps. I came here the day before yesterday; was subpœnaed by Mr. James. I do n't know Mr. Farrand.

Van Arman states he is a large fleshy man.

Witness — Have no recollection of speaking about this matter with such a man; such a one did not come to my house to speak with me about it, the same week that Frink spoke to me about this matter.

When we met, they passed on the right side, about thirty rods from Clark's house, and between his house and the forks of the road; it is a public road. Likely I met other teams; can't say. Teams are met generally on that road every hour. Phelps halloed, "What are you doing out here?" I asked him if he was lost out here, and he said he knew where he was going, and was not lost. We always spoke and addressed each other familiarly.

To Frink — We met them the Friday of the week before the arrest.

Privilege reserved to cross-examine this witness further hereafter.

James Peeler recalled for cross-examination — Resided in Detroit for over two years; left about two years ago. Knew Kellogg here. I came here in the fall, and got acquainted with him the next spring; then lived in Beagle's house near Crand Circus; he boarded with me

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there near a month; then I moved to Daly's house, where he boarded with me till I left the city. I worked for Chamberlin, Jackson, Knight, and Samuel Howlett, while in Detroit. I was then married; was married at St. Marie's in 1846. I lived at the Saulte St. Marie; I was married by a justice of the peace; forget his name, in July, 1846, in my own house, and have lived ever since with the same woman. I was boarding then with a Frenchman, and took the house, and he then boarded with me. My wife's name was Davis.

The woman I live with has not another husband living that I know; she had a husband before me; I have heard his name, but forget it. She called herself Miss Davis. Do n't think Davis was the name of her first husband. Do n't know if he is living; never heard if he was living or dead.

Mr. Seward excepted to proving whether witness lives in a state of adultery or not.

I can't say how long I knew my wife before I was married to her; think about six months. She worked for James Carson at the Sault. I worked there for Carson, also for Tinker, and also McKnight. There were a man and woman present when we were married. I can't now tell who they were. I went across the street after them; the man kept a boarding house then, up the river, about fifteen rods from Van Anden's, opposite my house. I rented my house from a widow; the house is right on the same street with Van Anden's. There was one log house between me and Van Anden's, perhaps more. I was married in the day-time. The two present were not man and wife; both were young. I had known that man nearly a year. The woman I knew all the time I was at the Sault. Can't remember either of their names. She lived at the boarding house. Don't remember when I left the Sault, but it was a short time after I was married. The name of the justice of the peace was not Dodge; there was only one justice of the peace in the town that I know of. Got a certificate from him; do n't remember if it has witnesses' names on. I never looked at it; do n't trouble myself with such things. Think my wife was married by the name of Davis, but am not certain. Carson, with whom she lived, kept the Algoma House, and was also a carpenter. I was to work for Carson when she came there. Suppose she came from Detroit. Did not know at the time that she had another husband living. Have since heard that her other husband is still living.

Mr. Seward objects to the last testimony given in answer to the question, "Have you heard that her first husband is still living?" and asks it to be stricken out.

After argument, the Court suffers it to stand, and an exception is noted.

Witness — I was once imprisoned in the old jail of Detroit on suspicion of money taken from Mr. Berhaunt's; this was the second year after I came into Detroit. Was arrested about five miles from Detroit. Was put in jail on Saturday night, and let out on Sunday. A man named Dewy was arrested with me. I was arrested at my house, five miles north of the line on the Pontiac road, this side of Young's tavern. I was bailed out on Sunday. Went to the place where I was arrested, in the summer, and left it in the spring. Was brought before a justice's on Woodward Avenue, in Odd Fellows' Hall, on the second floor.

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Don't know the justice's name. Have been through Michigan Centre; stopped there a few minutes once, at Filley's tavern, when it rained. Never was there at a shooting match. Know Filley only by sight. Kellogg stayed in the city two months after me, and since then has boarded with me. Have never been in any jail but the Detroit one.

I do n't know O. Newbury; I know Walter Paton, D. Chamberlin, J. Collins; I was charged with breaking open Collins' house, and arrested for it. I know Ira Beagle; in Detroit I followed all kinds of business.

I worked for Cyrus Moore; there are number of others here I worked for, but can't tell their names; I know H. H. Le Roy; do n't know if he knows me; never was charged with any other offence than these I have named; was not charged with any offence at the Sault. In Detroit also worked for a man named Jackson.

I was a soldier in the United States army when I went to the Sault; enlisted at Syracuse, N. Y.; then aged twenty-one; in the second infantry; served five years, and was discharged at the Sault; Kingsbury was captain; Tindall and Lovell lieutenants; Kingsbury gave me my discharge; I was discharged by a court martial before my term was up.

What for?

Witness declines answering.

I got my discharge in writing. I was at the time put in the guard house and did work. I know a tune called the Rogue's March. But it was never played after me; there never was a sand-bag or ball and chain put on me.

What was the offence with which you were charged at court martial?

Witness—Desertion; and for that I was court martialed and discharged; I was not charged with anything else; Kingsbury was on the court martial; it was held at Sackett's harbor; I was married while in the service; a soldier's marriage; I never lived at all with the wife I married in the service; do n't know anything about her, or if she is dead or living; she had one child laid to me; I do n't know if it was mine; I married the wife I had in the service first; I was married to her by a soldier's marriage; an officer married us; he was a justice of the peace; married in a house outside of the garrison at Sackett's Harbor; we never lived together, but slept together off and on; can't tell how long we so continued; I saw her after she had a child; she and I remained at Sackett's Harbor a year or two after our marriage; I do n't recollect what was her name before our marriage; do n't know how old she was, or if she had ever been married before; I was punished once in the service, at Sackett's harbor, before my discharge, for going out without mission.

To Seward — I was arrested on suspicion of taking the money of Berhaunt's; I never had an examination.

AFTERNOON SESSION.

James H. Davis—I live one mile west of Michigan Center; last August I worked, on the 8th, for Mr. Fallan, and on the night of that day I went to a ball, at Coykendall's, at Leoni. I got to Mr. Coykendall's about 8 o'clock P. M.; got there before the cars passed; about an hour

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and a half; they usually passed about half-past nine. I know Woliver by sight; he was there; I don't know when he worked there. The ball was held in a bowery on the same premises. Woliver was in the barroom soon after I arrived; when I saw him he was pretty well intoxicated. I think the cars passed between nine and ten, going west; remember their passing. I know the Prices; one of them, I think, was there that night. That train of cars was not stoned, to my recollection; I did not see anything of their being stoned; I did not stone, or help to stone them. There were two others by the name of Davis there that night; my brother, a small boy, and another Davis whom I do not know. I am called Hughy Davis. When the cars passed I was standing on the steps in front of the tavern. S. Bacon and L. Champlin were standing with me; don't know, but think Woliver was there, in the barroom. Woliver was not sober, or able to go far that evening. I left there about four o'clock in the morning; I think only one train passed while I was there; my brother Abraham, who was there, is aged about fifteen years; Darius Davis is another brother; he was there when I arrived, but left directly after; think he was unwell, and went to Jackson's, for whom he then worked; the other Davis there was from the north, but I don't know his name. Can't state if Woliver was in or outside the house when the train passed; saw him in the barroom about ten minutes before. Did not see him leave the barroom; did not hear any hitting or clashing of the cars; they passed with the usual rapidity, and did not slack up.

To Seward—The ball was on the 8th of August. L. Champlin, E. Price, Woliver, and I were not standing together when the cars came up. L. Champlin was out with me, but neither of the other two. Price did not say in my hearing, "the cars are coming, let us stone them." I did not go out with Woliver, Champlin and Price, or any of them on the occasion; L. Champlin and I did not go a little way from Eben Price on that occasion; did not see stones thrown, or throw any, or hear any rattling of stones on the cars, nor hear people halloa on the cars. The cars run about ten or fifteen rods from the door of the tavern. My name is Hugh; am called Hughy; I was not in the ball room till after twelve o'clock that night.

Cross-examined.—Don't know that I ever was in Coykendall's before that night; think I was once; never there before at night; have been there since. I began keeping a daily memorandum in June, 1850; there is nothing in it about stoning the cars. Know the Prices very little; but enough to know them apart; only had seen Woliver occasionally; spoke to him this evening; I went from Mr. Hallan's to the Centre, and from there to Leoni; I found L. Champlin at the Centre, and went from there to Leoni with him; knew him intimately; my brother and others told me that Woliver swore about Hewitt Davis; I saw it in the paper, and have talked to a number about it; I have told my version of it to Mr. Miller, who lives near Jackson; do n't know, but think I have never spoken to Mr. Higby about it; do n't think I have spoken about it since I came to Detroit; came to Detroit day before yesterday; when I speak a great deal, I don't remember what I do say; I never was at a ball there but once; do n't know the name of the other Davis; do n't know him, never saw him since; went to attend the ball, but they would not let me in;

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only saw Woliver a few times before that night; can not say what hour I saw Woliver first; left Mr. Fallan's about five to six o'clock; stopped at the Centre about half an hour; there saw Barrett, N. Credit, and L. Champlin at a wagon-shop at the Centre; saw Davis there as I went along; from Mr. Fallan's to Leoni is four or five miles; I looked at my watch about ten minutes before I got to Leoni; can't say who I first met in Leoni; it was so dark I could n't recognize the persons I first met; did not see either of the Prices when I first got to the tavern; it was about eight o'clock, when I got there; did not see Credit there; don't remember seeing O. D. Williams there; can't say how soon after I got in I saw Woliver; I was about a half a mile from Leoni when I looked at my watch; light enough to see it when close up; I was in and out of the bar most of the evening; was with L. Champlin most of the evening; did not keep watch of Price; he might go out and throw a stone without my knowing it; I was not looking or listening to see if a stone was thrown; it might be done without my hearing it; do n't know where Price was when the cars passed; can't say who went out when I did; many were passing in and out; Champlin and I did not walk together and converse as friends that night; was not watching; he might have come out on the steps with me; I left the steps once, and went down to the bower; Price and Woliver might have passed out while I was on the steps without my seeing them; I went out one side; there is no other door to the barroom; Price and Woliver might have gone out and stoned the cars without my knowing it.

I know Samuel Brick—often saw him on the railroad; he had men working under him on the railroad. Do n't know any of his men; think Brick was at the ball. I did not say in presence of Brick, or any of his men that night, "damn the cars, let us go and stone them," or that I heard any one else say so, or anything in substance like either of these things. I did not say so to any other person at any other time or place.

I heard of the Gazelle being thrown off. I did not, a day or two after that affair, make any observation to any one about things happening to the railroad. I know a Mitchell who keeps store in Jackson, and one who lives north. After the Gazelle affair, a day or two, did not say to either of them, or to James Mitchell, "they have been killing cattle here, and we are giving them hell." I had no such conversation with Mitchell, a day or two after the Gazelle affair, at the Centre on a hand car, nor on or near the track.

I never lived at Michigan Centre; last summer worked for Vandercooper, three miles south of Jackson. Since last January, have lived within a mile of Michigan Centre. I know Thomas Clark; presume I have talked with him about this affair. I did not, at or near Marshall, on a hand car, or near the track, in September or October last, say to him I knew that Fitch and Filley paid the money, but the boys did the work, in speaking of the injuries and obstructions to the railroad.

On the eighth of July was not watching Pine and Woliver, and they might go out and stone without my knowing it. Track ten or fifteen rods from the tavern door. There is a fence between the house and cars, and there may be a building — am not certain. If there is a building, I could not see stones thrown while cars passed such building.

I worked in October and September for Thomas Clark, for about a

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month. Did not tell him during that month, be damned if it was any use to pump me; I would n't tell on the boys, or peach.

To Seward — I knew nothing to tell of the boys. Champlin, Price, Woliver and I were not in the ball room before cars passed. No proposition was made to me of going over that night to stone the cars. Champlin, Price, Woliver and I did not go out of the ball room, or off the steps, when the cars passed. Do n't know, if glass was broken, if I would hear it.

To Van Dyke — I went out of the barroom often. I did not see the others come out; that is what I mean by saying they did n't come out.

To Juror — Woliver was pretty high; there was a good deal of drinking. I drank some, but not a great deal; perhaps three middling stiff drinks.

Geo. W. Brown — I reside at Union City, Branch county. Resided there last February. I came into Detroit on Thursday, February 13th, and got here about eight o'clock, P. M. I stopped at Johnson's hotel. I know Fitch. I saw him that evening when I came in; first saw him at the depot. I was not to exceed five minutes with him at the depot. From there we went to Johnson's. Then I went up and drank tea; and about nine o'clock went up stairs to a cotillion party. I did not see Fitch from the time I went to tea till going to the cotillion party, and then we met, and went into the ball room together. I stayed in the ball room till eleven o'clock, and during that time saw Fitch different times. He might have gone out, but I did n't see him. I joined in the party, and danced. Fitch did not. I think I did not room with Fitch that night.

The next Friday evening I saw him before tea; cannot state if he was at tea the same time with me, but saw him directly after tea in the smoking room; we got our cigars in Wood's bar, in the house; we sat smoking some time, and then went up Jefferson Avenue. Our business was to go and see a watch at a jeweler's shop, which Fitch spoke to me about buying — we went to the shop together, and came back to the hotel together about ten P. M. From the time we went in to smoke till about ten, we were all the time together; I think it was between six and seven when I took tea, and before dark, but near dark. Think I did not room with Fitch Friday night, but may have done so; I know the day I arrived in the city by my diary.

At the cotillion party, Fitch sat on the table near the music; can't say how long he staid there; saw him there several times.

Cross examined, by Van Dyke — Am engaged in milling; I have lived at Union City about one year; before then lived about three years at Jackson; at Jackson was quite intimately acquainted with Fitch; have visited him at the Centre; am certain of the day I came to Detroit. Saw Fitch at the depot on my arrival, and went with him to the hotel. He did not take tea with me; I may have been ten or fifteen minutes at tea. I had no occasion to notice Fitch that evening; or whether he was absent or not. I danced several times. I recollect Fitch several times purchasing refreshments; I saw him every time I came off the floor; can't say every time certainly; think he was not absent half an hour at any time; there may have been an interval when he might be absent without my noticing it; I was with him about an hour on Friday.

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After tea, on Friday evening, we went up town; I came in on Thursday, the 13th February.

To Seward — I saw Fitch on Friday, about half an hour before tea, and spoke to him of going to the dock to buy fish; this was on the stoop of the house. He went into the house, and in about half an hour I went to tea, and met him again immediately after tea; my intention was to go the jeweler's, where I bought some jewelry. Fitch was with me. He and I also went into the Exchange. At the cotillion party I remember seeing Fitch, as I passed up and down in dancing; when not dancing I was several times with him; I do n't think he could have been absent over half an hour without my noticing it; do n't think it probable he was absent half an hour, or at all.

To Van Dyke — I spoke of buying fish; I came from the depot; I think he said I would find plenty on the dock; I did not go round to the dock, but went into the house.

I do n't remember what kind of day it was. I was then dressed pretty much as now.

Mr. Howard concedes that this was not the same "fish" conversation testified to by Mr. Sheeley.

MONDAY, July 14.

Harvey Woodward — Resided at Michigan Centre for a little over the last three months. Know Ammi Filley. Went fishing with him about the 11th of last April. We started about sundown, and went to the Michigan Centre pond. Filley's boy, and a stranger called Lake, were with us; no one else was with us, and none else started to go, that I know of. I heard Lake speak of a key, and say, perhaps he should want to go before Filley got back. Heard Filley say, "Here is the key that unlocks that room;" before that, Lake had said, perhaps he should want to go before he got back; think he asked Filley what time he would return from fishing, and Filley said he did not know. Filley told Lake to leave the key with Mrs. Filley. I moved to the Centre about the 1st April, and had then lived there eleven days or so. It was on a suggestion of mine that day, that the fishing excursion was got up; I fix the time, as I know I had a hired man who commenced work on the 8th April, and it was three days after we went fishing. I had a family there then, and lived on Filley's farm, a little way from the Center. Can't state the time Lake left us, but it was before we shoved off in the boat; it was about dark when we shoved off. We returned about eleven o'clock P. M. No one fished with us but Filley's boy. We separated at the old barn, and I went home; did not go to Filley's.

Cross-examined — My business is farming. I moved to the Center from three miles north of Grass Lake, where I had lived about a year; before that, had lived six miles north-west of Leoni, for eight or nine years. I am nearly twenty-four years of age. Now occupy Filley's farm. On the 11th May was living in a house of Filley's; was not round Filley's that day — was plowing. Did not go up to Filley's in the evening. Had been at the barn about noon; had my team there. The last Saturday of March, I moved the first load into Filley's house;

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I moved in there with my family on Saturday, the 30th March; the Saturday I moved in my first load. My wife's brother, Thomas Secord, is the man who worked for me. He came from three miles of the Center. He worked for me that day. We quit about supper time, and after supper I went down to the tavern barn, and on the way met Filley's boy. I was at the barn five or six times that day. First, to feed cattle in the morning; second, to take out the cattle about eight; next at noon; next about two P. M.; next when I turned the cattle out about sundown. Can't say at which of these times I saw Filley that day, but I met him that day near the barn, and asked him to go fishing that night; it was on a Friday. I know it was Friday, as I was plowing that day. Never before or since fished with Filley. Did not see a buggy or two young men round that day, nor Lake till we were going fishing, when he came down to the barn with Filley. I had a light-colored coat, and I think a leghorn hat on. A little before sundown I left my house, and we started from the barn about sundown. The barn is about twenty rods from Filley's. We (Lake, Filley, and I) spoke of hunting. Lake told how much he could kill; think he said the most he ever killed was sixty deer in a week. Filley did not speak of being out hunting that day. I can not say how long Lake remained; I think it was dark before he got back. While there, I chopped the logs for fishing, and Filley split them. I did not see the key given, my back was turned. Lake said, "Perhaps I may want to go before you get back." Don't remember that Lake said anything more than that; think he said no more. Filley replied, "Here is the key that unlocks that room." I did not look up, or see if a key was given. Have spoken to a number about this. First to Mrs. Fitch, about a month after the arrest; she spoke to me about it. The next I told what I knew to, was the man who subpœnaed me. Have spoken to Mr. Frink about it since I have been in Detroit; never spoke to Mrs. Filley about it. The conversation about the key was just before we got through chopping. Filley's boy was there, carrying the wood into the boat. Lake remained about ten minutes after the key conversation. I returned as far as the barn with Filley, but did not go to the tavern, or see any persons round there that night.

To Hewett — The name of Filley's boy is Elijah.

Stephen Cash — Reside now at Michigan Center, and did last April. Know Hiram Hay; he returned from the east to the Centre on the 11th April, and stayed that night at N. Credit's; I boarded there. He did not leave there the next morning. I saw him next morning as soon as he got up, between seven and eight A. M.

Cross-examined—Know it was the 11th, because that evening we spoke of how long he had been away. He returned in the eleven o'clock train. Credit lived in the village. Hay got off at Filley's, and had a valise in his hand; I saw him get off; I was in Moulton's door; saw no one else get off then. It was an ordinary round valise. Don't remember that the cars run past Fitch's before he got off. I think they threw the valise off the cars and he picked it up, but am not certain; know he had a valise, and saw him go into Filley's with it. I moved to the Centre last fall; before that, lived at Grass Lake two and a half months; before that lived in New York. I became acquainted with Hay

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a year ago last April. I am a farmer, but work out for any who want me. I live in Michael Roy's house, twenty rods north of Filley's. In August or September I moved to the Centre; there was a train run off there; never heard what train, or who did it. I was then living in Dr. Moulton's house. I fix the 11th as the day Hay returned—as he spoke that night about how long he had been away; said he had been about three weeks away. He said that was the 11th, he got an almanac to reckon how long he had been away. It was a Friday. I was not at Filley's that night, was not near it, and did not see people round there; was not there the next day, or the Monday following. Cannot tell what occurred on the 9th; I am not sure, but think I was plowing on the 5th. Think I was at the Centre, chopping wood on the 1st April, but can't be sure. Do n't think I am much related to Moulton, I married his wife's daughter.

Alden S. Luce — Reside in Jackson county, in the town of Leoni; have lived there nearly fifteen years. Lived at Leoni village last April. Am somewhat acquainted with Phelps, since spring. I recollect seeing him in Leoni on the 11th April, between ten and twelve o'clock A. M. I saw him when he came into the village; he came from the south in a one-horse wagon and gray horse. He was alone in the wagon. As he came in his horse got into a ditch, and started and run past Coykendall's tavern before he could stop it. When he stopped it, he turned round and hitched to the post at the tavern. I did not see him go away, and do n't know how long he stayed. I saw him there again the same day, between sundown and dark, at Coykendall's tavern. I heard some conversation between him, and Corwin and Myers.

Witness—I heard some conversation both times that Phelps was there. The first time was outside the barroom door, and off the steps. I do n't know that I can state his exact words, but Phelps had asked Corwin and Myers to drink, and at the bar said he wanted them to go to the Center to roll on the ball alley with him. I did n't pay particular attention. Did not see Williams there then. Phelps said Filley had no liquor, and they must have some liquor to take over, and asked Coykendall if he had a jug he could let them have. Coykendall said he had not; then Phelps asked Corwin if he had a jug, or could n't get one. Corwin said he believed he had one at home, and Phelps told him to go and get it. Corwin left, and I went home before he returned; this was after dark some. I went back again, and then they were about starting from the tavern. Phelps and Myers got into Phelps' wagon, and Corwin got in alone to his, and they started. Phelps and Myers went off one or two or three minutes ahead. I did not see Williams about the tavern at the time they started away. When Phelps was there at noon, I do n't know that I heard him want them to go to the Centre with him.

I was not present when the liquor was paid for. Do n't think I saw Williams at Coykendall's the first time; Phelps was there that day.

The next time I saw Phelps, was on Thursday morning, the following week, on the railroad track, at Leoni, walking east, not far from sunrise. He came down from the west; there was no person with him.

Van Dyke objects to testimony as to Phelps' acts, relative to which he was not interrogated.

Objection sustained.

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Witness—I fix the date of the 11th, as there was a suit before Ebs. Bennett that day, in which I think Corwin was a witness, and I have since examined the record.

Cross-examined — I saw Phelps the Thursday morning after the 11th. Know it was Thursday, as on that day I went to Jackson to buy some groceries; can't say what kind, not whiskey or rum. I bought some of the groceries at Kingsley's, and some at Williams and Paler's; I paid the cash. That morning Phelps told me he was going over the river, and would be back in half an hour, and pay me some money (a note) he owed me, and I waited some time for him, but he did not come.

The suit was between A. J. Freeland and Geo. Taylor, about a trade about horses and oxen. Corwin was a witness for Freeland. I pettifogged for Freeland. It was about sunrise I saw Phelps; think it could not be the Thursday of the week after the week following the 11th. Never saw Phelps' horse run away but the once; the horse ran a piece that time; that was on the 11th, and it was, I am confident, the Thursday following, I met Phelps on the railroad track.

On the 11th heard two conversations between Phelps and the others. Saw Williams in my shop at Leoni that day. I have acted as justice of the peace for eight years in Leoni, and near there. Did not draw up a mittimus or pettifog to get Bennett to jail, but gave some advice to Bennett, justice of the peace, as to the law of the case as to committing Bennett for contempt. Can't state the date of this occurrence. Bennett was brought up and examined and left, and then arrested again.

When I saw Phelps' horse run, it was between ten and twelve. Am confident it was in the forenoon. One evening, some time before, I saw Phelps at Leoni, and also once after the 11th. Until the evening I saw him before the 11th, which was about two weeks before, I never knew Phelps, though I may have seen him.

I knew Fitch, Filley, and most of the defendants who reside at the Centre and round there, fourteen or fifteen years. When I was justice of the peace, they had not frequent suits before me. Williams once sued Dobbs for an assault and battery before me. It seems to me there was a jury, but I can't tell who they were.

Seward objects to the testimony.

Van Arman — I propose to show that many of the defendants were on the jury, and were struck off by Dobbs, and by the direction of this witness, acting as justice of the peace; put on again by the constable, and struck off again, and again put on, by direction of this witness.

It has been already shown by Dobbs, that the affray with Dobbs grew out of his refusal to join these defendants in depredations on the railroad; and to show that in such a case he acted in gross violation of his official duties, will touch his character, and show his partiality to the defendants.

Mr. Fraser — If the justice acted as stated, it was a crime, and he may refuse to answer; but if he answers, and in the affirmative, it shows a disregard of his official oath, and therefore impairs his credit. If he violates his official oath, what guarantee is there that he will not violate any other oath?

Mr. Seward — I object to the testimony on this ground: if the witness denies the acts stated, the prosecution may contradict him; and if the rule extends to the admission of this testimony, it extends to going

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over any act of a witness' life, and forming an issue on each one. The rule is limited to inquiring if the witness has been guilty of any act that by law disgraces or renders him infamous. The witness was a justice of the peace, and a man's moral standing cannot be determined by any single public or official act.

Van Dyke — Never having been in public life, I can't say if public acts are a fair standard of morals; but it is to be borne in mind, that one of the defendants was a party to the suit inquired of, therefore it is not quite foreign to this case. Would it not be competent if in all their cases this witness acted as justice of the peace, and pursued an unusual course in their favor, in order to show bias in their favor?

Cites Greenleaf on evidence, sec. 446; 1 Cowen and Hill's notes, page 732.

If we find him when acting as a justice of the peace, traveling out of the beaten track to procure a jury favorable to one of the defendants, is it not a fact competent to go to the jury to show a bias of his mind?

Mr. Seward—The last counsel presents the matter on new grounds, viz: That it shows a bias or partiality in favor of defendants. The evidence must be such as will raise a legal presumption of bias — as relationship, or belonging to same association, or that a party has felt or expressed such bias — but they can not go into remote and desultory acts or transactions, in order to show its existence. It can not be shown by a single act of favor or preference to a party.

Court — I will not decide the question at present. If I hereafter allow the question, the witness can be recalled.

To Van Dyke — I have lived at Leoni village for fifteen years, with the exception of about ten years that I have been absent, and during those ten years have lived in the township of Leoni. Have lived now in the village since last November. Since about the 1st of January have kept a grocery, and from November to July last, have acted as justice of peace; also have worked at shoemaking, and occasionally practice law. Fitch, Filley, Corwin, and others of defendants, have been my associates from time to time. I know Filley's tavern; within a year have probably been there three or four times; before November last, lived in the north-west part of the town, and did my milling at the Centre, and occasionally went into Filley's. The 11th of April was rather a coolish day, pleasant and sun shining; don't recollect any rain that day; guess it didn't rain the day before. Williams I did not see at the tavern, but he may have been there. I had no particular occasion to notice what passed that day; my attention was called to Phelps, as he owed me. The first time I saw Phelps on the 11th, I remained only ten or fifteen minutes.

I know a person named Esq., or Judge Allen, formerly of Leoni; it was not before him that Bennett was committed.

I have known Corwin ever since I first came into the country; have been intimate with him ten years; have been intimate with Williams five years, and Coykendall three years. Live twelve or fourteen rods from Coykendall's tavern. I have been frequently with the persons I have named at Coykendall's, at town meetings, and other times. I am in there frequently in the evenings; have met Williams there frequently, as he boarded there; Corwin not so often, till this spring.

To Seward — I kept no liquor at my grocery till after the 4th of

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July last; I have had a difference with Williams, of three years' standing.

To Van Dyke — I was a justice of the peace till the 4th of July.

Nathan High — I know Williams, Corwin, and A. J. Freeland; I was not present at Leoni at any time when they traded horses. I have seen Corwin and Freeland there frequently together; I never went into the barroom there, and interrupted a conversation between them, or either of them, and H. Phelps. Have seen Williams, Corwin, and Freeland there together; never, that I recollect, saw these three and Phelps together at Leoni, nor at any other place that I recollect. Have seen Phelps at Leoni, at Coykendall's. If I had so interrupted a conversation, I think I would remember it.

Cross-examined. — To Van Dyke — Can't say what time I saw Phelps there. Don't then recollect any one there but Phelps and Coykendall. Never, that I recollect, saw Phelps and Williams, and Phelps and Corwin there together. Never interrupted a conversation between Phelps and any of them by saying, "boys, what's the privacy." I once, along in the winter, introduced Wynans to Phelps, at Coykendalls. Wynans was not there then; I have no recollection of Wynans and Corwin, or either of them coming in at that time. No one there but Williams, Coykendall, Phelps and myself, at that time, that I recollect. Never interrupted a conversation between Phelps and others, by saying, "boys, what's the privacy."

I live at Grass Lake; came there from Leoni. Have been in Canada; never was sentenced to state prison; never was confined to prison in Canada; I was imprisoned once in Adrian. I was not sentenced; I was there on suspicion, in having a hand in bogus making.

To Seward — I was in jail in Adrian a week or two; they did not appear against me, and I was discharged.

To Van Dyke — Was arrested at Ann Arbor, and brought to Adrian. Never in jail or custody but that time.

July 14, P. M.

E. F. Smith — Reside at Leoni village, and resided there in April last. I saw Phelps at Leoni sometime in April. Cannot state the date or the day of the week. Saw him about sundown. He was then with a horse and kind of buggy at Coykendall's tavern. I then heard some conversation between him, Corwin and Myers.

Frink — State if he, Phelps, asked Corwin and Myers to go with him to the Centre?

Van Arman objects to the question.

Witness — There was whiskey bought there that night, and carried away in a jug bought by Corwin. I saw Corwin, and Phelps, and Myers, drive off west together, at this time, in the direction of the Centre. The two latter in Phelps' buggy, the former in his own.

Frink now renews the question.

I think Phelps asked Corwin to go to the Centre with him. I believe Mr. Phelps bought the whiskey. I think Phelps told Corwin that Filley had no whiskey, and that they must have some, if they went to roll

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on the alley, and that Corwin got the jug, and Phelps paid for the whiskey. I was there when Phelps came, but can't tell what direction he came from; they left there not long after — about dark. The conversation I have given occurred in the barroom. I can't say if Myers was in the barroom at the time. Coykendall was. It was from Coykendall I believe they bought the whiskey. I know O. D. Williams; think he was n't there at the time.

Cross-examined — I saw Mr. Luce there part of the time. I can't tell what part. Can't say if he was there when they left. I noticed his going home while they were there, and saw him there again. Did not see him come back, but saw him there again; but do n't know if it was before or after they left I again saw him. There was a small crowd there. Phelps was there most of the time, from when he came till he left. I was there before him. Came from my blacksmith shop. I have lived a year in Leoni. Came from a mile and a quarter north; where I lived for about four years. Know Phelps very little. Conversed with him once in Kellogg's. Do n't know I ever did but the once. All the conversation I heard, occurred, I believe, in the barroom and on the stoop; can't say which. I think Phelps came from the west. Do n't recollect that any one came with Phelps. Can't say whether Phelps or Corwin came there first. Think Phelps came there before Myers. Think Myers was the last of the three who came; they stayed there about half an hour. Phelps came a little after sundown. I do n't recollect having had any conversation with Corwin or any one before Phelps came. I do n't know as I had any particular errand to Coykendall's that night. I talked with Coykendall that evening, but I do n't remember what about. Phelps asked me to come in and take something to drink; he called me stranger. Do n't recollect if I talked with Myers. Can't say if I talked with Corwin. I was there from when Phelps came till they left. Do n't recollect anything that was said, save what I have told, between any one of those there.

I think Phelps paid for the whiskey, because he threw down a quarter, and Coykendall was going to give him change, and he said if it was worth anything it was worth that; they drank before this; it was after they drank that Corwin went for the jug. Coykendall got the whiskey out of jugs in his bar. Do n't remember if out of one or more; my impression is, he measured it, recollect he did, in a measure; think he measured it in a pitcher; he then stood behind the bar, I think. Do n't know if he poured it from the pitcher into the jug with or without a tunnel. Do n't know if I then was sitting or standing. I know it was a quarter, from the conversation I have stated; what I have stated was all I heard or know about who paid for the whiskey; that conversation was a few minutes before they started. Can't state if I spoke to Luce that night. Corwin left in a horse and wagon. Can't state who harnessed his horse; do n't remember his leaving to do it. I was there before Corwin; did not see his horse at the door when I came.

To Van Dyke — I was there before Phelps, but can't say how long; I presume I went to get a drink; I drank with Phelps. Don't recollect of drinking but the once. Think I stayed there till the cars passed, about nine o'clock. Don't recollect the cars passing that night; I am not positive that they passed that night; I am in the habit of staying

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at Coykendall's, or the store, until the cars pass, the train going west; have no distinct recollection of the cars passing about eight or nine o'clock, or about that time. Do n't know who paid when we drank all round. Do n't recollect Phelps paying but the once. The only reason I say I went home about nine o'clock is, because the cars passed there about that time; I do n't know that they passed then about nine.

To a Juror — The time we drank all round, there were about four or five of us drank. I believe they charge three cents a glass.

Henry Phelps recalled, and the following questions put by Mr. Frink:

1st. When you were in Indiana last September, did you form the acquaintance of a William Dyer?

2d. When you were in Springfield, Lagrange county, Indiana, on a Sunday about the 15th of September, did you see him?

3d. Did you then ask Dyer if he was a constable?

Mr. Frink proposes to put the foregoing questions to the witness.

Mr. Van Dyke objects — It brings in irrelevant matter not before touched.

Mr. Seward — It is in the discretion of the Court; we deem that allowing the questions will tend to elicit truth.

Mr. Fraser—In the Queen's case a witness was allowed to be recalled, but they were confined to matters growing out of the prior examination; it has never been allowed to recall him to examine as to new and immaterial matter.

Mr. Frink — Phelps stated that he had no hostile feelings towards Fitch. Our object now is, to show that he had expressed hostile feelings to Fitch; and threatened to break him down by such prosecutions as this.

Mr. Seward — Hopes the interest of the defendants is as material as the interest of the public. A few days since the prosecution were allowed to defer a cross-examination, (Peeler's)— the defendants now merely ask to resume a cross-examination on a point not drawn out before.

Van Dyke — We do not make the objection, if it is put on the ground that they wish further to pursue what Phelps said in reference to his feelings to Fitch.

Court — A witness cannot be recalled merely to lay new ground of impeachment; but if the design is as stated by counsel, to pursue further the testimony given by Phelps, I will use my discretion in admitting it.

Question — Did you say to Dyer, "We have a lot of men, or number of men, living near me; it is almost impossible to get any proof against them; there are men of influence among them; among the rest Capt. Fitch, but I am bound to break them up. I believe a man is justifiable in resorting to any means, and if he cannot do it without, in resorting to false swearing. I will have revenge"— at the time and place mentioned in the other questions?

Witness — I might have said so under certain circumstances, but have no recollection of using such language.

The witness states that he cannot answer without his memoranda. The defence states they will, when he gets the memoranda, also put the following questions:

1. Do you know John Hawley, of Milford, Lagrange Co., Indiana.

2. Did you ask him if he wanted a job; that he had been recommended to you by Doct. Merwin, as a suitable person to do a job; you

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wanted one; and also that you wanted him to burn a depot, at Detroit, and would give him fifty dollars; that the railroad company would offer a large reward, and you and others would swear it on to men who had had their cattle killed, or been injured in some way, and he should have his share of the reward — from the tenth to the fifteenth?

William Dyer being brought into court, the witness Phelps says, on looking at him, that if his glasses were off, he thinks he would pass, in Indiana, for David Losier who stole Clark's horses.

Witness — I was at Doct. Merwin's house in Indiana, last September.

Question — Did you there solicit Miss Merwin to go to the Centre to board, become acquainted with Fitch's family, and leave counterfeit money on his premises?

Answer — I did not. I was at Merwin's in September. Hopkins, the sheriff, and I think the prosecuting attorney asked me to go to Merwin's and see the woman he was living with, and ascertain if she was his own daughter. Myself and Marvin Clark went, and the sheriff got a man in jail to give me a letter of recommendation to Merwin. I went there, and made as an excuse that I wanted some counterfeit; they showed me a large amount of bogus. Merwin also told me that he had stolen property about the house. I gave information, and he was arrested soon after, and sent to state prison. I recognized the woman he was living with as his wife. He, when here, passed her as his daughter, but I do n't know if she was such.

In January last, I stayed at W. B. Laycock's one night, with my wife.

Question — Did your wife, after you retired, ask you if you were going to see Fitch the next day, and if you could do as you thought you calculated to do; and did you reply, if Wescott would do as he agreed, and stick by you, you thought you could come a good drive on Fitch?

Answer — I think she may have asked the question, but I think I made no such reply—for at that time I did n't know there was such a man in the world, as Westcott.

Court adjourned till nine o'clock to morrow morning.

Tuesday, July 15.

Henry Phelps on the stand.

To Mr. Seward — I did not know the person in court by the name of Wm. Dyer. If his name is David Losier, and I think it is, I know him. I became acquainted with him, and followed him for ten days, in Indiana, last fall.

I did see him in Springfield, Lagrange county, Indiana, about the 15th September last, if he is Losier; but I have no recollection of seeing a man, going by the name of Dyer, while I was in Indiana. I did not ask Losier if he was a constable; I only saw him at a distance, running across a mill-pond. Did not at that time say to the person now called Dyer, that there were a lot of men, &c. as in the question put yesterday. Did not speak with this person at all. Had no such conversation with him, on or about that day.

Question — Had you any such conversation with him, about that time, at any place in that neighborhood?

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Van Arman objects — They have Dyer here, and if he says he had such conversation, they can fix the place with certainty.

Question — Had you such a conversation in Newburgh, town of Johnson, in the tavern of Mr. Kimball, with the person now called Dyer?

Answer — I had not; do n't recollect seeing this man there; if he is Losier, I saw him, but had no conversation with him; if he is not Losier, he may have had a conversation with me, which I have forgotten. I did not make to Dyer such statements, unless, perhaps, in connection with a Captain Sandy and his party, but I made no such remarks in reference to Fitch or these defendants. Capt. Sandy is the man who robbed the treasury at Coldwater; and I used no such expressions to any one, save in relation to Sandy and his band. My business there was, in part, to catch Sandy. I had a warrant for him, and a portion of his band. I did n't use such expressions without the words as to revenge.

To the question, "Do you know John Hawley, of Milford, Lagrange county, Indiana?" witness says, "I have no recollection of such a man."

Question — Did you, between the 10th and 15th September, when in that county, on horseback, about a quarter of a mile from Hawley's, meet and have a conversation with him, and ask him if he wanted a job, &c., as in the question put yesterday?

Answer — I have no recollection of such a man, or such a conversation, there, or any place else, or at any other time.

Question — Did you ask Hawley, at that time, if Ackerman was at home?

Answer — No, for I knew Ackerman was in jail; but it is possible I may, (being a stranger,) have asked where Ackerman lived. I do n't recollect his telling me Ackerman was in jail. Have no recollection of asking him what Ackerman was in jail for. Have no recollection of speaking to any one on the subject. I did not ask him where John Hawley lived, nor did he reply he was John Hawley.

Question — Did you, in January last, at the house of Julius B. Clark, after your return with William Laycock, from Michigan Centre, on the occasion when you went to buy Fitch's cattle, say to Julius B. Clark, or his wife, or both of them, that you had been after Fitch for eighteen months, and would have him in the state prison if it cost you $1000, or all you were worth, or cost you your life?

Answer — I did not. I did not, at that time, make such a statement, in form or substance, to William Laycock. I did not make that statement, at the same date, at the house of David Laycock, to him or any of his family, in presence of William Laycock.

In answer to the question relative to the conversation with his wife, put yesterday, witness says he thinks no such conversation passed, but she may have asked if he was going to see Fitch.

I knew in the state prison a man named Cooper. In the first part of May, met him on the railroad wharf in Detroit. Did not ask him to go out west, and shoot at the cars.

Question — Did you then ask him to rob the railroad company's safe, offer to furnish him a key to open the safe, and tell him how to get into the room where the safe was kept — propose to divide the money he got from the safe; and tell him the company paid off the men the

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first of each month; and say that, about the 25th of that month, he would find a large amount of money, or a large pile.

Answer — I did not make those propositions. He came to me during the spring, after the arrest of these defendants, and, I think, after Gay's death, and told me he had a couple of horses he had stole from below London, in Canada, and that he wanted to dispose of them. I told him I would see him in an hour or so. I went and told Knox, Steward, and Titus of it. I went out on the cars that evening, and he met me on the way to the depot, or near it, and told me he had some friends coming from Farmington to rob the depot safe, or one of the banks. I told either Mr. Knox or Titus of this at the depot; think I also told Clark, and to keep their eyes on him. I went west on the cars; on my return, he again spoke to me about the horses, said they were at Farmington, and wanted me to go out and see them. I consulted with Stuart, prosecuting attorney, about it: he thought it was a scheme to get me out in the country, and do something to me, and advised me not to go. I thought the matter looked cloudy, and did not go.

To Stuart — I afterward understood that Mr. Frink was at the head of it. Frink told me after that, he, Frink, was waiting out there for me.

To Seward — Mr. Frink said to me at first, that he did not go to Farmington, and offered his solemn oath that he did not. After, on the 4th July, when I told him where he got his disguise, he said he had gone there, and that he would give an explanation hereafter.

To Van Arman — When I was in Indiana last fall, Ormen Clark went from here with me. I went for him, and in his employ. There I met and was with Hopkins, sheriff of Lagrange; Mr. Morse, of Wayne, occasionally; Clark was with me all the time, save two days. On the morning of the 14th I went twenty miles and back the same day without him, and about ten miles on Sunday without him. These were the two days. We went after horses stolen from Clark; but after we got there, I got in with some blacklegs. Was employed by Hopkins, to hunt up a certain band.

I did not make the statements inquired as to about Fitch, but I think to Goodrich and Hopkins I used some such expression in relation to Captain Sandy and his band, a portion of which band lived in Jackson county.

Seward objects to this testimony, on the ground that the witness cannot give the expressions he used to others than Dyer, the person inquired of.

Court — The witness may state, as explanation, that he used similar expressions as to Sandy, if it is so.

Exception taken.

We had repeated conversations relative to Sandy and his band, in which similar expressions were used. Think in Dr. Norton's office; in Kimball's, on Sunday evening, I used to the doctor such expressions, that we were resolved to break up Sandy's band, and use all artifices to do so; that they had stolen and committed burglaries. There were a great many persons there that evening; perhaps, during the evening, one hundred persons were there. Can't tell who were present at this time, as I only knew a few of them.

William Dyer — I reside in Springfield, Lagrange county, Indiana.

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Moved there fifteen years ago next November. I moved there from Trumbull county, Ohio. My business is agent for Beach & Wheeler, of Buffalo, in the grave-stone business; and I also am a constable. I have had that agency two years the 18th or 19th of May last. Have been a constable since April, 1850; am a constable still; it is an elective office. I have had a family since ten years next fall. Have resided with my family all that time, but for four years of the time in New York state. Have been deputy to the sheriff there during the sitting of court occasionally, during the four years I lived in Buffalo and Chautauque county. In Buffalo I worked at turning out gun-stocks — in Chautauque county worked for Cottington and Dyer, twenty-seven miles from Buffalo. Did not live in Buffalo, but got my present agency there, and moved to Indiana. I never went in Indiana by any name but Wm. Dyer. Knew a man named David Losier; have seen him in Indiana. I am not that man. I never bore his name. I never was engaged in stealing horses, never was pursued or accused of any crime, or indicted, tried, or convicted.

Knew Henry Phelps; saw him in the state of Indiana, at the village of Newburgh, in September, 1850; and about the 15th of the month, on a Sunday morning, at a tavern kept by Kimmil. Phelps asked me if I was a constable; I told him I was.

Question — Did he tell you they had a lot of men near him, that it was almost impossible to break them up, &c., (as in the question put to Phelps, which is repeated to witness.)

Witness — I can answer that question, "Yes," all but the name of Capt. Fitch.

Mr. Fraser objects to the answer being received. There is nothing to identify the matter with the present case or defendants, save the name of Fitch, and if that is left out it is clearly inadmissible.

Court — The rule as stated is correct, but I do n't yet know what the witness will say as to the name, whether he is in doubt as to it, or has no recollection at all of it.

Witness — In the commencement of the conversation, Phelps spoke of Dr. Merwin as a hard case, saying we had hard cases in Indiana as well as in Michigan, that there was a company of men living in Washtenaw and Jackson counties against whom it was almost impossible to get evidence to break them up — that they were concerned in horse stealing.

Van Dyke objects to the testimony proceeding, unless defendants' counsel state they expected to identify the name of Fitch with the conversation.

Mr. Seward states he expects and believes to be able to identify the name of Fitch with the conversation, and the witness is allowed to proceed with the detail of the conversation.

Witness — That it was almost impossible to get any clue to them; that he was determined, in some shape, to break them up; he was determined to come a drive on them in some way, and he believed a man was justified in resorting to almost any means, even false swearing, to accomplish such an object.

During this conversation he mentioned some names, but I can't remember what name or names. He used the word Captain, but it was

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not Captain Sandy. The gang he mentioned I should think was not Capt. Sandy's gang. He said there were men of influence among them. After he used the term of having a drive at them, he said he was determined to have revenge at any rate; he said these people resided in Washtenaw and Jackson counties, Michigan. This was between one o'clock, P. M., and sunrise. Lansing Curtis, Russell Brown, Dr. Norton, Ezekiel Brown, and a man named Pontis, were present.

The person named David Losier is half a head taller than me, and looks ten years younger, and has a white skin. I have worn spectacles for ten years steadily, and off and on before then. The conversation was in Dr. Norton's room, and he was in and out.

Mr. Van Dyke now moves that the testimony of the last witness be stricken out. He asked the counsel before it proceeded, if it would be so connected with the defendants or one of them, that it might be contradicted. It has now closed, and turns out to be a mere collateral matter. From the manner the questions were put to Phelps, varying them by putting in and leaving out the name of Fitch, it was plain they doubted if the impeaching witness would come up to the mark. From the testimony of Dyer it is evident the conversation did not allude to Fitch or these defendants. The name of Leoni or Michigan Centre is never once mentioned; the gang spoken of, Dyer says, were mentioned as a gang concerned in horse-stealing; and Dyer gives no name or circumstance to identify it with these defendants, or to vary it at all from the narrative given by Phelps. The testimony was taken under our objection, and therefore we ask it now to be stricken out, on the ground adverted to, that the conversation was not in reference to the issue here, or to the defendants, hence, was collateral, and not to be contradicted.

Mr. Van Arman — To impeach a witness, the contradiction must be as to something material, or within the fair limits of the case, not as to irrelevant or immaterial matter. There can be no identity of subject matter, as the offence charged was not committed till long after the conversation. They may show hostile feelings on the part of Phelps against these defendants, but the testimony of Dyer does not come under this head, as he does not identify the conversation as relating to Fitch: he does not even say he believed Fitch's name was mentioned. There is neither identity of persons nor of subject matter.

Mr. Seward — It has been assumed that all of the present defendants reside in Jackson Co. The fact is, that one of the defendants, Van Sickles, if not more of them, resides in Washtenaw County. It is said, that because Dyer does not give the name of the "Captain" referred to, there is no identification. Now there is no band mentioned but that of Captain Sandy and that of Captain Fitch. Phelps says he spoke of Captain Sandy and his band; Dyer says that it was not Sandy's band that was alluded to.

It is said that subject matter cannot be identical, as the depot was not burned till after the conversation; but the case made by the prosecution, is, that the conspiracy existed long before. The conversation could only refer to one or other of the two gangs, and it is for the jury to say between the two witnesses, to which of them it referred.

It is also in proof that Phelps was engaged by the District Attorney in hunting Fitch and his gang in September.

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Van Arman — The testimony of Phelps is, that he first entered the service of the District Attorney in December.

Mr. Seward — The entire of this case turns on the credibility of Phelps. He sought, yesterday, to impress on the court and jury, that Dyer was Losier, a horse-thief — now it is at least competent to show that Dyer is not Losier — to remove the impression made against him, and leave the matter where it was before he was produced yesterday, and that extraordinary scene occurred.

This is only one witness to the fact of this conversation. We shall follow it up by other proof directing and pointing the declarations of Phelps to Captain Fitch and the defendants.

Mr. Fraser—The admissibility of the testimony is for the court, not for the jury. If material, it is for the court to admit, and the jury to weigh it. If collateral and inadmissible, the court must rule it out, and the jury have nothing to say to it. The witness, Phelps, is entitled to protection, and the appearance of impeachment can not be got up against him, unless it is such in reality. Phelps and Dyer agree in all important particulars — both agree that the conversation was of a gang who were engaged in horse stealing, and a portion of whom lived in Washtenaw and Jackson counties. Phelps says he spoke of Sandy's gang — Dyer that he spoke of a Captain, but not Sandy, and there alone they differ. Where do you find anything in Dyer's testimony that identifies the conversation as having reference to Fitch and his gang — nothing, but that a Captain was spoken of, and it appears that Fitch was called "Captain." We must bear in mind, that in September, Phelps had no connection with defendants — was not employed against them, and there is nothing even to show that he then had any knowledge of their evil deeds, or of their being banded together. They seek to introduce the testimony on the ground of showing hostile feelings against Fitch, yet fail to show that the conversation referred to Fitch. At that time the offence now charged was not committed, the arson having been committed in November last, and until the following month of December; hence these defendants are not the band alluded to. Identification is the turning point in this question.

Mr. Seward — The ground taken seems to be, that the testimony can not be received, unless it is clearly identified. Now, in the case of the "Price boys' warning," it was received upon the understanding that, by subsequent testimony it would be more clearly proven. So also in the case of Gay, his expressions or confessions were received upon the statement being made that, they would afterwards be brought to the knowledge of some of the defendants. It is therefore premature to ask to strike out the testimony now, until we have an opportunity to more clearly identify the conversation as alluding to Fitch. Mr. Seward proceeded to comment upon the peculiar position of the witness Phelps, his manner of testifying, &c., as a reason why every facility in the discretion of the court, should be used, for the admission of testimony affecting his evidence.

Mr. Van Dyke — Protested against the unprofessional manner pursued by defendant's counsel in commenting upon collateral issues of the demeanor and character of witnesses. If such a course was persevered in,

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it would compel the prosecution to a similar line of argument, and lead to endless discussion.

Court — Phelps states that he did not make the remark inquired as to ——; Dyer says he made the remark, but can't state if it was made in relation to Fitch. Unless it related to Fitch, it is of no importance. I now understand the defendant's counsel to intimate, that they will prove the reference to Fitch by another witness. If so, this witness' testimony would not be excluded merely because he did not remember the entire conversation. I will reserve the matter till I hear any further testimony that may be produced on the point, and will allow the prosecution to defer the cross-examination until it is certain whether the testimony will be stricken out or not.

Tuesday, July 15, P. M.

Mr. Frink wishes to state to the counsel on the other side, that, in respect to the reports of a design on his part to assassinate Phelps, he will offer no impediment, but give any facility, if the prosecution desire to go into it. He has heard such reports as coming from the officers of the court and others, and has listened to them as long as he desires to.

Court — Have you any objection to deferring the examination till this trial is over.

Mr. Frink — I am ready for it any time.

John Hawley — Live in Lagrange county, Indiana; I had a conversation with a man who was called Henry Phelps, between the 10th and 15th September, about one-fourth of a mile from where I live, in Milford, Lagrange county, Indiana.

Witness here points out Phelps, and says he thinks he is the man.

He told me he wanted me to burn a depot in Detroit, and that he would give me a sum, I think fifty dollars, for doing it; he said the railroad company would offer a large reward, that he and I would swear it on to men who lived on the road, and who had their cattle killed, or were otherwise injured; that I should have my share of the reward. This conversation was between sundown and dark. Phelps was on horseback. He asked me if David Ackerman was at home. I told him Ackerman was in jail. He asked me what for; and I told him for stealing. He asked me if I knew where John Hawley lived. I told him that was my name. He asked about Ackerman first. I have lived in Milford twelve years last fall — am a farmer — I work with my father. I was twenty-two years old last February.

Cross-examined — I live one mile west, and one mile south of the Centre of the township of Milford. It is the south-east town of the county. I have lived there all the twelve years, save two months, about November, 1849, when I worked in a still-house for Mr. Clark. It was between the 10th and 15th of September I saw Phelps. I think it was Thursday, or Friday, or Saturday. I think either Thursday or Friday. It was not Sunday. I live on the plank road. Am sure it was between the 10th and 15th. On the 15th, on Sunday, Merwin was arrested for stealing. I was at home that day. I live about three and a half miles from the Tamarack House, kept by Judge Burman. I know Merwin, but not much; was once at his house, about a year ago. Do n't know

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where his wife is. I have been at Burman's often. I never saw Phelps before that day. I live on east side of road. Met him about eighty rods north of my house, and forty west of it. There are four corners there,— met him north of them. When he came up, he said "good evening," and asked where Ackerman lived. He rode a bay horse. I was alone, and so was he. He had a palm leaf or straw hat, I can't tell what kind of a coat he had, but think it was light-colored. He had a dark-colored shirt on. Can't tell what kind of pants or vest. It may have been a sorrel horse. Met him not more than forty rods from Ackerman's. He first asked if Ackerman was at home. I said no. He then asked where he was; I said in jail. He asked what for; I said for stealing. He then asked if I knew a young man named George Hawley. I said that was my name. He then said he had a job of work for me — that I was recommended to him by Doctor Mervin. I asked him what the job was; he told me to burn the depot at Detroit, for which he would give me fifty dollars; the company would offer a reward, we would swear it on to others living on the road, who had cattle killed, &c., and would share the reward. I said I would not do it. He said to me not to speak of it. That was all that passed between us, that I remember. I have told all that passed. He rode off. We were there only a few minutes. I think he had a saddle and bridle. His horse was neither gray or black. I don't know certain, but I think he asked me where I lived. After we parted, I went home. I have told all I remember that passed. Mr. Frink reduced my statement to writing. I never told my father about meeting Phelps. Sometime ago, but not within a day or two, I told my brother, who is twenty-four years of age, that I had seen Phelps. Did not tell of it to any one at that time. Last winter, I told old Mr. Latty of it. Latty was at our place, I think, in November, after I saw Phelps. Do n't know that I told him of it then. At Latty's house, Latty spoke of Phelps.

Van Arman — Repeat every word that passed between you and Phelps?

Witness — Repeats the same as before, not saying that Phelps told who he was.

Question — How did you learn Phelps' name?

Answer — After he inquired for Ackerman, he told me he was Henry Phelps, and he lived in Michigan. It was after he inquired for Ackerman, he told me his name. Can't tell in what part of the conversation he told me his name. He did not mention Latty, or any one but Ackerman and Merwin. Never saw Merwin or Ackerman since. Did not mention the matter to any one at that time. It was in June last, Latty was last at our house; he and Elder Billings came together in a buggy. Had not seen Latty for over a month before. About Latty's, I am acquainted with John Crandall, also with people at the distillery. The time before last that I saw Latty, was at his house; he keeps tavern, — I had no particular business there then. Am not positive Latty was at our house in November. He was there once before he came with Billings to buy a horse. I did not see him then, but have seen him at our house once, between the time I saw Phelps and the time he came with Billings. He was alone, and only stayed a few minutes, neither my father or brother was there. Can't tell what time of the year that was — he had no business — he passed the compliments, stayed a few minutes, and left.

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Think he wanted to know, if I remember, what Phelps said to me at our house, in the fall when he was there. Don't remember if I told Latty what Phelps said — don't remember what was said between us. Don't remember what month Latty came to our house, but think it was in October or November. Don't know how long it was after this that I went to his (Latty's) house. I went from home to the distillery, and then to Latty's, his son, Bone Latty, was there. Stayed all night, and slept alone, up stairs, in the west part of the house; there were some strangers there, but none I knew. Latty, I think, was at home; this was sometime in the fall, either October or November. Never heard of the depot here being burned, till last spring — I heard some one, I forget who, speak of it. Hardly ever read papers. The evening I was at Latty's, I spent in the barroom; there were several in, I can't remember what was said; they drank some, but not much. I was then at work at home, which is twenty-two miles from Latty's. Had no particular business to Latty's or the distillery, merely went to see the folks I knew. At Clark's distillery I saw John Siggins, in front of Clark's store; also, Nathan Hatchell, a mulatto. I can't tell any one else I saw. I saw John Wilcox — also asked him how he and his folks were, and he asked me how I was. I did not go to Clark's, for whom I worked — when there I boarded with B. Mills, who had moved away; from the distillery I went to Latty's. On my way from home to the distillery, I stopped at the Union Mills, and spoke to Mr. Granniss; think it was not sundown when I got to Latty's. I walked all the way from home, save a chance ride I got on the way. I don't recollect any conversation I had that night with Latty. Had breakfast next morning, and saw Latty. No doubt I talked to him, but can't remember what he said or what I said. I think we spoke about Phelps; there was something said about Phelps, but don't remember what. It seems to me there was something said about Phelps by somebody, I can't tell what. That is my best recollection of all that passed. I might have seen Latty before he came to my house in June, but don't know that I have. I did not tell about Phelps to any one, till I told it to Latty. Don't know why I told him; something was said about it, I think in the barroom.

Billings and Latty came to our house, and wanted to know about these things. Billings stayed in the lane, and Latty came to the house.

Before he came with Billings, and several days before Latty came to our house, and wanted to know if I remembered what Phelps told me; he wanted to know if I remembered what I had told last fall. No person was with Latty this time. In a few days after, he came again, with Billings. No person has pointed out Phelps to me in Detroit; but I asked a man near the court door, as he passed, if it was Phelps, and he replied, yes. I am sure the time I saw Phelps in the road, was before Merwin's arrest, and since. Am sure his horse was n't gray. I do n't think it was gray.

William B. Laycock — Last January I lived a mile west, and a mile north, of Leoni. I am a little acquainted with Phelps. He and his wife came to my house on a Monday, from the 10th to the 15th, and stayed all night. After they retired I heard some whispering between them.

I heard Mrs. P. ask him if he was going to see Fitch next day, and if he thought he could do as he calculated to do. I heard Phelps in

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reply say, if Wescott would do as he had agreed to do, and stick by, he thought he could come a good drive.

I took Phelps from my brother's, Julius P. Laycock, next day, to the Centre. We started to go to the Centre about noon. At the Centre we stopped at Filley's tavern. When we first got there, a little boy called Hiram was there. After awhile Filley and an other man came in; we had then been fifteen or twenty minutes there. After that Fitch came in. I heard some conversation between Fitch and Phelps, from the time we left my brother's. And all the time we were at the Centre, and until we left, I was all the time in sight. I went into the ball alley with Phelps, after Fitch came into the barroom. I rolled two balls, and then Fitch came in, and after he came in I rolled four balls. I heard a conversation in the ball alley between Phelps and Fitch. Phelps offered him $100 for his twin cattle. Fitch said he would not let them go for that, it was not what he paid for them. That was all that passed between them in the alley. Then Phelps and I went into the barroom, and Phelps paid the beer on the rolling. Fitch followed us, and sat down near the fire. Phelps stood in the barroom door and offered Fitch $120 for the cattle. In the ball alley, Fitch refused the price Phelps offered; said he should n't let them go at that, and should n't let him have them. I am sure I heard all the conversation that passed in the ball alley; there was nothing said that I heard about the railroad, or burning depots. Phelps and I left the Centre a quarter of an hour after we left the ball alley. Nothing was said in the ball alley about a plan to put Laycock out of the way. Fitch did n't say that the plan was a good one if they would stick to it. Fitch did not say it was their plan to kill any one who exposed them, or shoot them on the stand, or anything of that nature or character. Phelps did not speak of the difficulty of burning the Niles depot. Fitch did n't say he would give Phelps the oxen at one hundred and forty dollars, for burning the Niles depot, or anything of that nature, nor that the burning of the Detroit depot had cost him about twenty-five dollars, nor that he would give him a match; nor that it never failed and never would; nor that they had prepared a match there, and sent it to a man in Detroit, to whem they had paid one hundred andt fify dollars; nor that they prepared it so it would burn forty-eight hours; nor that it was put in the cupola, and, when started, all the water in the river would n't put it out; nor that they had damaged the company half a million, and that as soon as the new depot was built, would burn it again.

On the way home from the Centre on that day, Phelps said he would have Fitch locked in the limbo, because he would n't sell him the cattle.

After the time we came out of it as stated, neither Phelps or I went back into it; about fifteen minutes after we came out of the alley, Phelps and I started for my brother's. I was in sight of and hearing of Phelps all the time; got to my brother's between four and five o'clock P. M; I had not seen Phelps for two years before this day.

Cross-examined.—From Julius Laycock's to the Centre is near three miles. Phelps came to my house about dusk, Monday; my nearest neighbor is forty-seven rods off; Phelps did n't go over there that evening; nor did he next morning; my nearest neighbor is Daniels. Phelps retired to rest about ten o'clock; slept in the same room with

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me; the feet of the beds came together close; the room eighteen feet by twenty; I heard whispering between him and his wife for one-half or three-fourths of an hour; did not hear what they whispered; they whispered one-half or three-fourths of an hour and then they commenced talking loud; I heard the clock strike eleven, and then went to sleep. I had n't been to sleep at all till after eleven; the last time I heard, they were whispering again. He had an infant with him, I also had a child, and the children and the whispering kept me awake. The first I overheard was, she asked him if he was going to the Centre to see Fitch; before that, at the tea-table, in her presence, he had said he was going to the Centre; he replied to her that he was, and if Westcott did as he agreed, he would come a good drive on Fitch. This, by her and him, was spoken loud; they whispered before and after this. I heard nothing else in particular.

They talked an hour and a half, but the above was all I heard. Can't tell how much of the time they talked, perhaps half an hour. They spoke of the child crying, and about the jug — the child was fed with a baby-feeder. We went to bed about half past nine o'clock, and they talked and whispered till eleven; but the above is all I remember. I did not mention to Phelps about what I heard him say. My wife and I spoke of it next day. My wife and I did not speak that night, save twice to the child. When I said they whispered and talked about an hour and a half, I meant they spoke to the child, and tried to quiet it. The child cried once after they went to bed, but only once that I remember; that was near ten o'clock. I think by their talk they fed it from the jug twice, before I went to sleep. After I first went to sleep, heard no more of the child or them. The question and answer I have given, was all I have heard distinctly, but there was whispering between them I did not hear. There was, during the evening, some talk about his horse. I got up about seven next morning. We got breakfast about seven or eight. After breakfast, Phelps went with me to see his horse. Next morning Phelps and his wife spoke of Fitch, and he spoke of how mean Fitch had used him. That morning Phelps told me that he was going down to see Fitch about his oxen. He said to me he wanted to come a drive over him in trade, and that was the reason he was going to trade with one who used him mean. We started for my brother's, four miles off; Phelps and his wife in his wagon, and I and my wife in our own, until we got to my brother's. I did n't intend going to the Centre, but then Phelps insisted on my going to the Centre with him. It is three miles to the Centre from my brother's.

We got to the Centre about one to two o'clock, P. M.; first went into the barroom, from there into the ball alley; besides Phelps and I, Fitch, Filley and Filley's hired man, were in the ball alley. We returned to the barroom; Filley and Fitch came into the barroom after us; we stayed about fifteen minutes there, and then went home; just as we came out of the ball alley, the cars passed west; at first we stayed fifteen or twenty minutes in the barroom, then fifteen or so in ball alley, then fifteen again in the barroom, and then started home. I saw Corwin at the Centre that day, near the ball alley — between it and the house. Do n't remember seeing any others that I know. In the ball alley, Fitch said he would n't take the $100 offered by Phelps, for the cattle,

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as I stated; Phelps said he would give $100 for them; Fitch replied, he would n't give them for that; would 'nt let them go, or let him have them any how. That is all that was said between them in the ball alley.

In the barroom, Phelps said again he would let him have $100 for the cattle. Fitch said he would not let them go for that, it was not what he paid for them; then Phelps offered him $120. Fitch said he would n't let him have them any how, that his old woman had something to say to it. Phelps said he knew men to refuse the full value of cattle, and lose them after. Fitch replied something, and that was all that passed between them there. Fitch merely passed the time with me, and no more. Corwin merely said how do you do to me, and no more. Phelps said nothing to me, but that if I would roll he would pay the beer. I was no way interested in the trade. I got to my own house about twelve at night; got to my brother's before sundown, about four or five; the sun might be one-half or three-fourths of an hour high; had no dinner till we got supper at my brother's. I only stayed long enough at Julius' to get supper; then Phelps and I went to my brother David's, where I left Phelps, and went home.

When the cars passed, I went to the house at the fence, and Phelps stood in the door of the barroom; then we went back to the barroom together; we were about fifteen minutes in the barroom the first time; when Fitch came in he spoke to Filley about a fence; I think he also spoke to Phelps; Filley was standing round all the time; Fitch said something about a fence being sound, and Filley said it must be put up. Both in the barroom or ball alley, Phelps spoke about having some beer; I have told you all I remember.

I believe I am cousin to Laycock, defendant; I have been well acquainted with Fitch; I did n't tell Fitch anything about Phelps and Wescott coming a drive on him, and had no interest in it; I am certain it was Wescott that Phelps mentioned; I am positive of that as anything I have told; Phelps and I rolled on the alley; do n't know but Fitch rolled one ball; do n't remember that any one rolled but Phelps and myself.

To Frink—I do n't know but Phelps' wife is some relation to my father.

Morgan S. Laycock; live one and a half miles southeast of Michigan Centre; know Phelps; about the 18th December last he was at my father's; he came between sundown and dark, and staid over night; his wife and child were with him; he had a one-horse wagon. The next day he went to Michigan Centre with me; Mr. T. Laycock, C. Blackburn, John Ladue, and Phelps and I went together in a sleigh; we left home about eleven o'clock; I went to take some wheat to the mill; about eighty or one hundred rods from the mill, all the four parted from me, and they went towards Filley's; I remained about half an hour at the mill, and they returned, and all went home with me, save John Ladue; we got home about twelve to one o'clock in the day time; after we got home, in about fifteen or thirty minutes, Phelps, his wife and child, went up to my aunt's; he returned to our house about four P. M., to get his horse and buggy; he then went to get his wife, and came with his horse and buggy to our house, got his trunk and started for Palmer's; Palmer lives about one and a half miles from us; my aunt about eighty rods.

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Cross-examined — I have known Phelps eight or ten years; I first saw him at our house. It was on Wednesday, the 18th December last; he came to our house; I know, because I was fencing the railroad for Mr. Richards, and got my arm vaccinated that day, and had to quit work; I know it was that day, because a month ago, in sitting with Richards, he told me that was the day; also, I know the week I worked three days, and told him that evening I would quit on account of my arm; I have told this story before Mr. Frink, in Howard's office; he took it down in writing; we then agreed it was Wednesday, the 18th; I have thought so ever since he was there, it was Wednesday, the 18th; can't tell how I came to be thinking of it; did n't think of it till after the arrest; I have not read Phelps' testimony, nor has it been told over to me; I have been told he swore he went to the mill with me on the 18th; I have never been told to recollect it was Wednesday, the 18th. The night he wrote it down, Mr. Frink told me it was important I should recollect well it was the 18th. Before that I spoke with Higby at the Centre; he asked me if it was the 18th, and I remembered at once it was; I told Frink it was the 18th, and he told me to keep that well in my mind. It was the week before last I saw Higby; I have looked at an almanac, to see what day it was; did at the time my arm was lame, and since; two or three weeks before I saw Higby, they were speaking of my coming as a witness, and looked at the almanac. I have also spoken with Mrs. Fitch and Ring about it; they asked me when it was, and I told them Wednesday, the 18th; both they and Higby talked the whole thing over with me; can't say the time I spoke with Mrs. Fitch and Ring; William B. Laycock is my brother; he and I have talked this over in a bedroom at Andrews' hotel, on Saturday night, but never before that, as I recollect.

I recollect at home, before we went to the mill, Phelps said it was getting about noon, and it was time to start; we started about eleven o'clock. The afternoon of that day was cloudy; it was about 4 P. M. when Phelps started for Palmer's; he went toward Michigan Centre; that was the last I saw of him that day; I had no timepiece.

To Frink — You did not say more to me, on Saturday evening, than to see if I was certain it was Wednesday, the 18th. The road to Palmer's goes toward the Centre.

WEDNESDAY, July 16.

Henry T. Laycock — Reside in the town of Leoni. Am brother to Morgan Laycock. I remember Phelps being at my mother's house, in December last. He went to the Centre on a sleigh with my brother. They returned, as near as I can recollect, about one or two o'clock, P. M. Mrs. Phelps was there, and after they returned from the Centre, Phelps and his wife went up to my aunt's; his horse and buggy were then at our house. Phelps returned from my aunt's between four and six o'clock, to get his horse and buggy; then he went back to my aunt's and got his wife, and went to Palmer's; after he got his wife, he drove past without stopping at our house. My aunt lived east of us.

Cross-examined — I will be eighteen years of age the 25th of this month. My father died eight years ago. I live a mile and a half south-

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east of the Centre. My aunt is Olive Laycock, Martin's widow; she lives about one hundred rods south-east of me. Phelps came between sundown and dark, and stayed all night; I do n't recollect of his staying there at any other time. He came, I think, from the east, with his wife and child, in a horse and buggy; horse a dapple gray. I was n't there when he came, but I asked him which way he came from, and he said from the east. He, I believe, took supper there that night; I know he did, by candle-light. I do n't know who sat at the table with him; we took supper before he came. I do n't recollect the hour, but we took supper before sundown; special supper was got for Phelps and his wife; before his supper I asked him which way he came. His buggy was left in the road. I was not absent that night. There was not a spelling school that night, that I recollect; I think it was Thursday, the 18th September. I went to spelling schools last winter; think I did not in December. Do n't know the day of the month I went at any time to the spelling school. Phelps and his wife spoke of their child being sick. I do n't recollect what else they spoke of; do n't recollect anything I spoke of that evening; do n't recollect what time I went to bed. It is a log-house; one room below, in which all slept. Do n't know if I went to bed before Phelps, nor if I or my brother went to bed first. Phelps did not go out that night. Do n't remember if I got up before Phelps next morning. In the morning I went over to Michigan Centre pond, and got back before breakfast; at breakfast, there were Phelps, his wife, my mother, and two brothers. I then stayed at home till toward noon, when they went to the Centre, and then I went again to the pond; they went on our sleigh; Phelps, Blackburn, and J. Ladue went on the sleigh. I went to the pond the second time, about noon. I can't remember now, accurately, what time I went to the pond, or what time I left for the Centre. I got back before noon, but can't tell what time. I can't tell if they had got back from the Centre before I returned. Can't tell what time it was when they got back. After I got back, I skinned and stretched the muskrats I had caught. Can't say how long I stayed at the pond.

Victory P. Collier — Reside at Battle Creek, and resided there last fall and winter. Am, and then was, one of the firm of Wallace and Collier. Know Fitch; I met him once at his residence in Michigan Centre, on 28th January last. I went there in afternoon of the 28th, and stayed with him till forenoon of the 29th. I went to see him.

Question — Did you then employ him to come to Detroit? and if so, what for?

Witness — I did employ him to come to Detroit. I set no time for his coming, but he said he would come in one or two weeks. I wished him to come to make some investigation as to the origin of the fire in the depot at Detroit, and to see persons from his neighborhood who were in the employ of the company, among others Josiah Wells and Caswell, and others were mentioned whom he said he was acquainted with, and who were at work for the company.

Question — What was your motive in investigating as to the origin of the fire?

Objected to by Van Arman. The question allowed.

Witness — My object was, I wished to recover from the railroad

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company, pay for goods burned in the depot. I left Fitch's between ten and eleven A. M. on the 29th.

The defence offers to show that Fitch made a report to witness of the result of his investigation.

Objected to. The objection sustained, and an exception noted.

Cross-examined by Van Dyke — I had goods burned in the depot. When I left home I had no idea of employing Fitch, but after I saw him, I concluded to employ him.

To Seward — I left home with the intention of seeing Fitch on that business, and for no other purpose.

To Van Dyke — When I left home I did not intend employing Fitch. I had never met him before that time.

John Coykendall — Reside in Leoni village; keep a public house. Henry Phelps was at my house in the fore part of April, I think on the 12th. There was a lawsuit that day, and Corwin was a witness. Phelps wanted Corwin to go to the Centre with him, and Corwin said he could not, as he was a witness. Phelps came between ten and twelve, from the south; I was on the stoop, and his horse ran and got past the house; he stopped, and turned him round, and hitched him, and came in. Phelps left there before dinner. He had a one-horse wagon, and was alone. I did not notice which way he went when he left. I was at the suit in the afternoon, and just at night Phelps came again to my tavern and wanted Corwin and Myers to go to the Centre and roll on the alley; this was in the barroom; this time Phelps was there about half an hour. When the boys concluded to go with him, Phelps said there was no whiskey at the Centre; Corwin got a jug, and I let them have half a gallon; they took it and went off. Phelps paid for the half gallon. He threw down a quarter, and I told him it was more than I asked; he said I must take all I could get.

On that day Williams had a sick child, and in the fore part of the day got my gun to kill some game for it. I think Williams was not there when Phelps was there in the evening. Williams' sick child was at Crosier's, in Leoni village.

Cross-examined— I have lived in Leoni two years this fall; before that, lived in the town of Grass Lake. In Leoni I have followed farming and keeping a public house; in Grass Lake farmed. Before then I lived in Livingston county, New York. The morning Phelps came to my house, I was in the bar waiting on people. I was on the stoop when he came. I got acquainted with Phelps last fall. I know Fitch, Prices, Champlin, Filley, Corwin, and Myers.

It was about dinner time that I saw Williams that day, and again in in the afternoon about three o'clock, and again after Phelps and the others left for the Centre; he came to get his supper about an hour after dark, but I can't give the hour. I have a clock; I looked at it when I went to the suit, and it was then half-past two. Williams boards at my house; think he was there the day before, at his three meals, but can't be certain. I did not go to Filley's that day. I have been there, turkey shooting.

Phelps was there twice that day; the second time, just before dark. The second time I saw him in the barroom; Corwin, Myers, Luce, a man named Smith, and others were there. While Phelps was there

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Corwin went after a jug, and was gone perhaps five minutes. Save that time I do not recollect that Corwin was absent while Phelps was there. Myers was not, as I recollect, absent at all when Phelps was there. I do n't know if I went out-doors when they started for the Centre. I am not sure which of the three carried the jug. I have never seen the jug since. There were several drinks taken there that night. I think Bennett was there. Phelps paid for what they drank; I think he treated twice that evening, and paid a quarter a lick; every time he called them he gave a quarter. When I offered change he went to the door and called Smith and others to drink; that night he paid me either four or six shillings. These men (Corwin, Myers, and Williams) have been a good deal at my house, and I do n't know but I have associated with them more than with other of my neighbors, and I do n't know as I have not. Myers and Williams lodge with me. I do n't know as they meet and spend their time more at my house than is usual at places where men board.

Ira W. Kellogg — Reside in the town of Leoni. Know Henry Phelps a little. On the 11th of April, at Coykendall's tavern, between sundown and dark, I saw a man they called Phelps in the barroom. I heard him talking both with Myers and Corwin; I heard him ask Myers if he would go down to the Centre and have a roll on the alley. I heard him speak also to Corwin about going down to roll; he also said Filley had no liquor, and if they were going to roll, they must have some to drink. I saw some liquor put in a jug, and Phelps put down a quarter. Coykendall offered change, when Phelps said, it was worth a quarter if it was worth any thing. I saw them leave, Myers and Phelps in one, and and Corwin in another wagon, about dark; they went west. I did not notice Williams in the barroom, or about the premises, that evening.

Cross-examined —The time referred to was the 11th; I know it was, as I have referred to a suit between Freeland, defendant, and Taylor, and I heard part of the trial that day. I am at Coykendall's almost every day, and sometimes two or three times a day. I have lived in Leoni about nineteen years. Am pretty well acquainted with almost all of the defendants. Have been sometimes at the Centre, but not often. I looked at the Freeland suit on the docket, about a week ago, to refresh my memory as to the date. I talked with Higley about this matter two or three weeks ago, and about a week ago looked at the docket. I also talked with Delemater about it. Since I came to town I have talked with Frink, and my statement was written down.

Bennett's is the docket I looked at. I have often seen persons drink, and get liquor, and pay for it, at Coykendall's. Have seen Corwin do so, and strangers also, but can't fix any one time.

Have repeatedly heard Corwin and the others say they were going to the Centre to roll. Was at the Centre two or three weeks since, and stopped at Fitch's, and talked with Mrs. Fitch about this suit.

The evening spoken of, I was not in any part of the tavern save the barroom.

I saw Williams at the suit in the forenoon. Am in the habit of seeing him at the tavern every day. I think his name was mentioned that evening by Corwin. Cannot say if I saw him there the evening before. Higby was the first who called my attention to the facts of Phelps being

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there, and the date; this was two months after Phelps was there, and during the two months I had never spoken of or referred to the matter.

L. A. Hildreth — Reside in the township and county of Jackson; know Filley and where he lives. Last fall I put a penstock in for him, to run water to his barroom. The logs went in under the floor on the north side and run through to the south side, the hole to admit the logs was opened in the wall on the north side; there was also a hole opened on the south side, and the barroom floor was taken up in order to lay the logs; the penstock came up on the south side. The logs were from six to ten inches in diameter; the penstock six or eight inches; the space between the floor and the ground where the logs lay is from eighteen inches to two feet. The hole in the north wall was large enough to shove the logs through, it was from a foot to eighteen inches in diameter; the logs lay on the ground; the hole on the south side was smaller, six by by twelve inches. It was the last days of last November I put in the logs. The hole on the north side was made before then, and some time before that in the south side was made. The wall was of stone, and about a foot thick. There was a hole made through the floor, for the penstock, large enough to put the logs down, and a temporary floor was put down to keep the penstock in its place. I was engaged three or four days at this job. The opening in the floor was kept open only a few hours; the penstock stood close to the south side. On the north side the log went through the hole in the wall, and on the south side the log came close up to the hole; the south side was up and down larger, but from side to side less than the log. Was there in December, and then noticed the hole still open. I think they were in the same condition, and about the same size, as when I left them.

I know the premises occupied by Fitch; have lately examined the fence on the south side of his premises, next to the railroad. I examined all along, the paint on the heads of the nails, both at the top and the bottom; did not discover that any had been moved but one, near and within ten or twelve pickets of the southwest corner; a picket was gone, and a new one put in, the new one appeared to be in some time, as the nails were rusty; the new picket was not painted; I made the examination on the 9th July.

At the time I put in the logs, there was a fence round the south side of the barroom, but part of it was gone; the hole on the south side, ten or twelve feet from the street; the part of the fence that was gone, was a little way from the barroom; it was the fence facing the railroad that was partly gone; think it was not replaced when I was last there.

Cross-examined — I reside about two and a half or two and three fourth miles southeast of Jackson village.

To Seward — The last of December, or first of January, the hole on the south side was as I left it; about three weeks since I saw it again, and it was torn out larger, and to the size of eighteen inches or two feet.

Cross-examination continued — I lived last season where I do now. In June or May last year, Filley worked at a job to bring water there for the railroad. I first put in the logs in May or June, to bring the water to the railroad. The water was brought from a spring southeast of the Centre. I do n't know if this job gave satisfaction. I finished it in June. It was the November after I put the logs in his house. The

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barroom floor stands eighteen inches or two feet from the ground. Do n't remember that there was a post near the south hole. There was no log put through this hole. Filley and I made the holes. Wells was about there then, and I presume may have helped. The hole was from the sill to the ground, and may have been six inches wide, or perhaps a little more. I noticed the hole a short time ago, and then it was about two feet wide and twelve or fourteen inches high; this was the 9th of the present month. I have n't at any time noticed it for the purpose of seeing its size. The last time I saw it, there was a large stone near it that came out of the hole. This stone was not taken out when I made the hole. This stone is some ten inches in diameter. I am sure that stone has been taken out since I was there first. I did not take it out. It was not taken out when the hole was made originally. When I made the hole, it was made from the sill to the ground. The hole is now no larger up and down than it was first. The hole is now large enough for a man to crawl through.

The fence south of Fitch's had two or three pickets broken off at the top, but not more than two or three. I found most of the heads of the nails covered with paint; there were no pickets that were taken out and set down lower; none loose at the top; none with two sets of nails. Did not try if the picket next the new one was loose; can't say if it was broken at the top. There is white-wash on every nail, save the nails of the one new picket. That fence is not dozey or rotten. About six feet east of the new picket there is not one very dark, that has not been white-washed or painted, and is narrower than the others. I did not notice that any of the nails were imbedded in the wood. Think there was not twenty of the pickets broken at the top. I examined the fence for the purpose of being a witness here as to its state. The one next to the new picket was not, I think, broken. Do not recollect any place where they were; three or four of the pickets next each other were broken off at the top. The paint or white-wash is plain enough to be seen on the fence at the south-west end.

JULY 16th, P. M.

Hart Holmes — I know W. Champlin, defendant; I remember the night of the party at G. Filley's last winter; I saw H. Phelps that evening; it was about the middle of March. I saw Phelps in front of A. Filley's; he started to go to G. Filley's; Corwin and Williams went with him. W. Champlin did not go to the ball that evening; he stayed with me that night. He was with me when Phelps, Corwin and Williams started to go to G. Filley's.

I stayed at my father's the night W. C. Champlin stayed with me; I can't say certain that it was in March.

Alamon Crozier—I reside in the town of Leoni; I was present at the fight last fall between Palmer and Corwin. I first saw Corwin, Palmer, Sherman, and others coming from the ball alley towards the house. I saw Fitch and Westcott; they were walking past the water tank; there was a third person, I think J. B. Toll, with Fitch and Westcott; I was in my wagon at this time; they met the others who were coming from

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the ball alley, spoke to them, and then passed on into the barroom. I went into the barroom after them, and stayed about fifteen minutes; I don't recollect whether Fitch or Westcott left before I did.

I am acquainted with the premises occupied by Fitch, and have examined the fence on the south side of them within two weeks. I think none of the pickets on the south side had been taken out; there was no appearance of any of them having been relaid.

Cross-examined—I was not in the ball alley, and did not see the fight. I saw Palmer; he was with the others, (ten or fifteen) who came from the ball alley; Corwin, Stone, and Sherman were among them. I did not notice particularly who were there; I have known Sherman about fifteen years; I had spoken before then to Toll, but did n't know him much. I was sitting in my buggy, a little north of the barroom door. I heard the fight before I pulled up my horses, that is, I heard the swearing and talking: I saw the people coming from the ball alley first, and Fitch Westcott, and Toll second; I don't know that Toll went into the barroom.

I did not find any new pickets on the south fence; nor any broken, or that had been loosened.

Jesse Crozier—I live about one and a half miles south west of Leoni. Have seen Phelps several times. On Friday, 11th April, I was going to Leoni with a load of rails, between ten and twelve o'clock, and saw Phelps about half or a quarter of a mile from the village of Leoni. He passed me. We were both going north. He had a one horse lumber wagon. I saw him again after I got to Leoni, at Coykendall's tavern. I was at Freeland's lawsuit in the afternoon, and about four o'clock I saw Phelps again in the wagon, going towards Grass Lake. I think in the forenoon I saw him leave Leoni, and go towards Jackson, about twelve o'clock. He then had the same horse and wagon he had when going towards Grass Lake in the afternoon. No one was with him either time.

Cross-examined—I have a family. Am son to last witness. Have lived where I now do, for two years. I had no particular business at Coykendall's. I had a team with me, a span of small white horses It was pretty good going. It was not a cold day. Phelps' horse took a start and ran, at the corner. The corner is six or eight rods from the tavern. This was on Friday. I do n't remember what I did the day before. I had my first load of rails that day when I saw Phelps. I think the Monday before I was at a town meeting, but am not sure. I came to the city to-day. Am not sure, but believe this is the 17th. Talked with Higby last week on this subject, on Sunday at my house. Higby asked me if I had seen Phelps, and when and where, and I told him. Think it was the 14th Higby spoke to me.

At the lawsuit I saw Corwin, Freeland, Luce, Bennett, Young, and Coykendall; I was not sworn; did not stay till the lawsuit was over. Am not sure, but think I saw Coykendall at the lawsuit. I was that day in Toll's store, and saw him and his wife; was also at the tavern, and there saw Corwin. Stayed in Leoni till the suit was commenced; Luce was lawyer on one side, and Burke on the other. I had not been home from the first time I went till after the suit was commenced; then and about two P. M. went home and drew another load of rails. Went into the court after the trial commenced, and they were swearing witnesses.

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Can't say who, or how many; Corwin was sworn. Freeland told me to come, as he might want me for a witness; afterward told me he would not; Smith and Button were also sworn; think Corwin was sworn first; don't know who was the last I heard sworn; they were swearing witnesses when I left. When I got to Leoni I first went and unloaded my rails, and then went up to the tavern; from there I went to Toll's store. I had been home and brought a second load, and unloaded them, and was going into Toll's store, when I saw Phelps going towards Grass Lake; at this time it was not later than five o'clock, About twelve o'clock Phelps went from the tavern west; in the tavern I saw Corwin with Phelps; did not see Williams there. First knew Phelps when he ran a distillery there. He was then gone four or five years, and I next saw him at Filley's, in the fall or winter. Don't know that I ever spoke with Phelps save once, in relation to a horse I had which he once owned.

Lorenzo Zimmerman — Lives at Leoni; I worked for J. Freeland last April; will be twenty-one in March. On the 16th of April I saw Phelps at Freeland's. He came across the wheat field. I was there at work, west of the house. I first saw Phelps on the railroad, which was north of me; he was walking. I was burning brush west of the house; he was going towards Leoni. I could n't see him all the way to Leoni. I did not see anything in his hand or under his arm. I did not see him in the wheat field. I said he came across the wheat field, because Freeland told me so. I did n't see a bundle or handkerchief with Phelps. I worked for Penfield last winter. I don't think Freeland worked for him then.

No cross examination.

Benjamin Sud — Resides at Leoni; know Phelps; was at Leoni once when Corwin traded horses with Freeland, on a Saturday, in the fore part of January. I did not see Phelps there then; did not see Phelps at all that day. Was at Leoni first day Freeland came to the tavern. When I started, had two horses, one with a halter, at the tavern door, (Coykendall's,) after dark, and that was the last I saw of him. He came to the tavern before noon, I was in Leoni all the time from the time he came till I started in the evening.

Cross-examined — Freeland was there all the time, for anything I know. Did n't see him away from the tavern. Can't fix the date, more than it was Saturday, in the fore part of January.

To Seward — The trade was made in the tavern.

Charles Palmer — Live in the town of Leoni; am son to John Palmer; will be sixteen in September; know Phelps; remember his being at my father's in December last. He came with his wife and child, in a horse and buggy. He arrived about sundown, and stayed there all night with his wife. Believe it was the week before Christmas; can't tell the day of the week; do n't remember of his being there more than the once during the week before Christmas.

Sheldon Sines — Reside at Grass Lake. Live with Hiram Smith. Last November I boarded at Charles White's, on Second street, in Detroit. I then worked for the railroad company. I remember the burning of the depot, last fall. When I first saw the fire, I was on Third street, a little below Mrs. Forsyth's. Third street runs from the front of the depot north to Fort street. Mrs. Forsyth's is the second house from

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Fort on Third street. As near as I could calculate, the fire was on the north side of the centre cupola, about half way between the cupola and the eaves. The fire seemed to me to be spreading. When I got down there the fire was scattered. I was on my way to the depot when I saw it. The fire spread rapidly. When I got to the depot I went up one pair of stairs, and half way up the second pair, the cupola appeared then tumbling in. I then turned down, and woke up the men who were sleeping in the pantry; thence I went into the back yard. Mr. White asked me to get a ladder, and I did, to pass water up to those who were putting the fire out. I do n't know how long I had then been at work for the company. In the fore part of the season I worked on the docks, in the latter part in the depot, assisting to load wheat into the vessels. When at the latter employment I worked some both at day and night. Did not work at loading wheat the night before the fire; do n't think I was in the depot the night before the fire. Do n't know what hour it was when I first saw the fire. Had been in bed. It was after midnight. There was a wheat bin right under the cupola, and they extended west of it, if I recollect right. Never took particular notice of what lights we used when working at the bins; three were tin sconces. Have seen them melt some of the grease of the candles on to the wood of the bins, and then stick the candles to the grease. Do n't know whether they were in the habit of working in the bins at night, but I have worked in them at night, but not often, and have seen others do so. The sconces I spoke of, are ordinary tin ones, with tin backs, like those in court.

Cross-examined— I was in bed that night, and was woke up by the fire-bells. William White was at home; do n't remember whether he or I first started for the depot. I got up and dressed, and went down to the depot; I was near Mrs. Forsyth's when I saw the fire; a little below her house, but can't say how far from the house, I saw the fire distinct between the cupola and the eaves; I did not notice the skylights; the fire, I think, came out of the roof. I can't tell how high the flames rose at that time; can't say if they rose as high as the cupola. I can't tell the size of the fire at the time I saw it; I do n't see any particular use in giving the size of it. I saw the cupola, and it was not on fire when I first saw it, nor was there any smoke from the cupola; when I got there, I went up one stairs and part of the second stairs, and turned down because I thought the cupola or roof was going to fall in; can't tell if the cupola or roof was then most burned, but there was a fire there.

I can't tell who I saw fasten a candle with grease; I did so once, below stairs, myself, and got blowed up for it; I can't tell how long I worked there; I worked there, and that is all I know. I have seen candles fixed up with grease more than once; when I did so, it was, I think, Steward who scolded me, but can't be certain, as he was always scolding.

They had not, commonly, glass lamps to work in the wheat bins; I am sure I have seen candles used round wheat bins; I can't say who used them, but have seen them used; they had lamps in the wheat bins; they used the candles to give light; I never noticed if they used the lamps to move round, and the candles stationary.

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I have seen candles lighted there; can't say how they lighted them, whether with a match or with another candle; when I saw them fix up the candles with grease, there were candles in sconces hanging up; can't tell how many nights I have worked in the bins; can't tell who worked in the bins with me.

To Van Dyke — White's house is about two squares from General Cass's. I can't tell how long I took from White's to Mrs. Forsyth's. I stopped near Mrs. Forsyth's not over three or four minutes, looking at the fire; I was a little excited; I did not holloa fire; the alarm had been given, and a good many were running to the depot. I know that the appearance of fire is deceptive; I had an idea that the fire was where I had stated; came along the same place to-day, and took a look from there at the depot. Higby asked me to do so. To-day the cupola looked to me a little more west than the old one. I just took a look near Mrs. Forsyth's to see where the fire was, and ran over to the depot; when I got to the depot, the fire engines were there, and one engine had just got to work. The fire could not be long going at the time I got there. There were not a great many persons there when I got to the depot; there were one hundred; do n't know if there were two hundred. Do n't know that I saw any fire, except above and along the roof, when I went into the depot. I woke up the men; do n't know their names. Had worked round the bins two or three weeks. James Burns was one of the men who used to work with me; he will know who worked up stairs, and at night with me. Burns is now at Jackson. In the bins, half a dozen generally worked together. Mr. Fisher was our boss in the wheat bins; he is now fireman on the road; he used not to be in the bins himself, but he superintended. I had worked at the wheat bins for a week or two before the fire.

The men were asleep when I woke them up in the depot, about a dozen of them. The room they were asleep in is at the side toward the river, and about the middle of the building.

At Grass Lake, last Saturday, I was at the depot, and we were speaking of the fire; I mentioned being here at the fire, and a Mr. Brown asked me where I first saw it, and I told him. Did n't see Higby till I came to Detroit. I had a talk with him to-day.

I went to Grass Lake, to work for Smith, the 6th of June.

White lived on the east side of Second street, about one block south of the Chicago road. White is now agent for the railroad company; from White's house I went across the common, till I struck Third street, just below the engine house, then went down Third street, from where I started, till down near Mrs. Forsyth's store; was in a place where I could get a good view of the depot or cupola; when I saw the fire, it rose about two feet from the roof, and was about the length of the cupola; it took about two minutes to go from Mrs. Forsyth's to the depot. Have had no talk with Burns about the matter. There were engines at the depot when I got there. Do n't recollect if it was a stormy or clear night. From what I heard persons say next morning, suppose it was about three or four o'clock when I was there.

Mrs. Tull — Reside in Leoni, and did last April; saw a man named Phelps at Leoni, on Friday, the 11th of April, a little after ten A. M.; his horse ran away after he came into Leoni. Went to Michigan Centre

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that day; got to the Centre about twelve o'clock, or a little past it. Stopped at Fitch's; saw the same horse and buggy that Phelps had in the morning, tied to the post at Filley's. About three-fourths of an hour or an hour after I got to the Centre, the horse and buggy was driven off south, across the railroad. Remained at Fitch's till about dusk. A man named Cross was there, and took tea with us at Fitch's; from Fitch's I went home to Leoni, and on the way met Phelps and Myers in a buggy, and Corwin in another buggy behind them. Met them about two and seven-eighth miles from the Centre. There was no person in the buggy with the man called Phelps, when the horse ran away, or when he drove off from Leoni.

Harriet Clark — In August and September last, was living at Fitch's. During the time I was there, in these months, Fitch and his wife roomed up stairs, in the second story, in a front room, looking out on the railroad. Left there in the middle of September. During that time I did not know of them ever rooming down stairs. I occupied a room up stairs, adjoining theirs.

Was at Fitch's again, and left there the 2d of April, and returned the 17th of April.

Cross-examined — Now live in Columbia, Jackson county, at my father's. First went to live at Fitch's in September, 1849; can't tell what time in September, but about the 15th. I then stayed there ten weeks, and did house-work. Am twenty years of age; at the end of the ten weeks I went back to my father's; returned to Fitch's about the middle of June, 1850, and stayed nine weeks, and then went home and remained at home till the 9th of December, 1850, when I again came to Fitch's, and stayed till the 2d of April. Have been again at Fitch's this summer, about May and June.

The ordinary bedroom of Fitch and his wife, and the one known as theirs, is below, west of the kitchen, and entered from the parlor; they changed up stairs on the 6th of July, and continued to room up stairs until I left, in September. When I returned, after I left this time, they were again occupying the room below. I never knew them to room above save the time I have mentioned.

This summer, in May and June, Mrs. Fitch and I have talked only once about their having roomed up stairs. Have been in Detroit a week; came as a witness; have not spoken of this matter to any one since I have been here; have not spoken to Mr. Frink since I have been here; two or three weeks ago, I spoke with Mr. Frink about it, in Mr. Fitch's at the Centre; have never spoken of it to Mr. Higby.

They changed their bedroom on account of the heat, and roomed up stairs all July.

In 1849, went to Fitch's about the middle of September, they then roomed down stairs; their room below is in the main building. I still think it was about the middle of June, 1850, I went there, and that I stayed nine weeks and returned to my father's. The room above is larger than the one below.

To Seward — Remember the State Fair last year; left Fitch's before the Fair; but can't state how long before; recollect it was the middle of June; do n't recollect anything which was to happen or otherwise, which enables me to fix the time I left; kept no written account of dates, when

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I went, or when I went away. Mr. Fitch's daughter was there while I was, and I occupied a room with her; she was at home during the time I was there. Fitch's room above was a good deal larger than the one below; the latter is a small one; I was at home at the time of the State Fair; do n't know but I was at home two weeks at the time of the Fair; that is my best recollection.

To Van Dyke — Worked by the week at Fitch's; got one dollar a week; am in the habit of working out at other places; can generally tell how long I work at a place; at that time got all my pay at one time in money; it was eight or nine dollars I got; in the spring and summer before I went to Fitch's, I was at home; went from my father's to Fitch's; was at home in May, and in June went to Fitch's.

Here the court discharged the jury till the 17th, at nine A. M.

Mr. Stuart, prosecuting attorney, stated to the court that John Hawley, a witness examined yesterday, had been brought before the police justice, on a charge of perjury, and was committed for trial, and the justice having no power to admit to bail in such a case, he wished the court to fix the amount of bail and receive it, if the prisoner could furnish bail; he would suggest that the bail be fixed at three thousand dollars.

Messrs. Seward and Howard—Thought the bail demanded too high; the prisoner was poor, and away from home.

Court —Will for the present fix the bail at $3000; if, when the party is ready to give bail, it is shown for any reason that the bail is too high, I can reduce the amount.

Court adjourned.

THURSDAY, July 17.

Amanda Fitch — I live at Michigan Centre with Mr. Fitch; lived there last summer; have lived with him as long as I remember. Mr. and Mrs. Fitch were in the habit of rooming up stairs during the warm weather. I remember the State Fair last fall; Mr. and Mrs. Fitch were lodging up stairs at the time of the Fair. During August and the fore part of September, they had a servant girl, Harriet Clark; she left Fitch's about a week before the State Fair.

I know Mr. Laycock and Joshua Wells; they worked for Fitch the summer before last. I was in the bedroom, and Laycock came to the window and said, "Fitch, I want to borrow your pistols." Fitch took the pistols off the stand, wiped the dust off them with his kerchief and then handed them to Laycock. Laycock was then at the bedroom window outside. Then Laycock said, "Fitch, I want some paper;" he did not say what he wanted with the paper.

Fitch told me to get the paper, but before I got it said, "Here is some," and he passed some paper to Laycock. Nothing further was said between them. Laycock went away with the pistols, and Fitch took his account book, and sat down by the sitting-room window and wrote in his book. Fitch did not go out immediately after he handed the pistols to Laycock. Laycock did not say what he wanted with the pistols. I heard nothing said at the time between Fitch and Laycock, but what I have stated. I was in the bedroom door when the pistols were handed out, and Fitch was in the bedroom; the room is below

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stairs. There was nothing said of the pistols being loaded; I heard nothing said about shooting an engineer, or at the cars in any way, or about giving the cars hell. Think it was a piece of a newspaper Fitch handed out to Laycock — think he picked it out of his desk. I do n't know as I did see Wells or Laycock after that evening; they were at work for Fitch at that time. The next time I saw the pistols, they were on the stand.

Fitch had a mattress in his bedroom up stairs. I was fourteen the 17th of last June. I am an adopted daughter of Fitch; A. Filley is my father, my mother is not living. Do not remember ever living with my father. I think Wells was not with Laycock when he got the pistols — did n't see him. Never saw the pistols handed out of the window to Laycock but once. Do n't remember what month this was in; it was just before dark.

I remember Mr. Cross being at Fitch's this year. Mrs. Tull and Mrs. Demming were at the house when Cross came. That day Fitch had been after some trees, and returned before Cross got there. Lockwood and a little boy, my brother, went with Fitch after the trees.

I think Fitch did not go out that night, after the pistols were handed out. He played his clarionet after he got through with his account book. He went next day after Cross was there, to Jackson, with Cross. The night Cross was there Fitch was out for a few minutes — he heard a noise over at the tavern, and went; he was only gone a short time, from five to ten minutes. He was not out but the once that evening before he retired. I think Fitch retired that night before me. While Miss Clark was at the house, she and I occupied a room up stairs, which joined that of Mr. and Mrs. Fitch.

I remember, that last Christmas, Fitch and his wife were not at home; they left home about nine, A. M., the day before Christmas, and went to Delemater's; I went with them. We did not go through the village of Jackson going to Delemater's. I was never sworn before. We returned from Delemater's the day after Christmas; we started from Delemater's for home, about noon.

Miss Clark was sick, for about a week, at Fitch's last summer. Do n't remember how long before she left she was sick. The day we went to Delemater's, Fitch did not go to any place before we started for Delemater's.

Cross-examined — I have never been sworn before. I call Mr. and Mrs. Fitch father and mother, being adopted by them. I came to Detroit a week ago yesterday with Miss Clark, Mrs. Tull, Mr. Delemater, and Higby. I have seen Mr. Fitch since I have been in town where we could converse together, though not alone. Conversed with him at the jail last evening. The pistols were long ones, that Fitch used when captain of a horse troop; they always lay uncovered on the stand; never missed them from there before. Have seen Fitch take them up and dust and clean them; can't tell when I saw him do this. I made no memorandum of the time he gave them to Laycock. I once wrote down something about this, three or five weeks ago, and sent it to Frink. My mother told me to write it; mother was in and out while I wrote it, and I showed it to her. She and I did not speak about it any more than the morning before I wrote, I told her what I have here stated about the

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pistols. I told her because Wells swore about them; never told her of it before then. It was in 1849 that Laycock got the pistols. I think it was '49, because it was not last year, and Laycock worked for us in 1849. I am sure that he so worked in 1849; I think in the summer of 1849. I do n't know what time of the year it was, nor what month. I recollect the State Fair of 1849; can't say if it was before or after that the pistols were handed, I think before. Can't tell how long Laycock worked there then; he has worked there often. Can't tell if he worked there last year. Can't tell which of the times he worked there it was that the pistols were handed out. No one in the room then but Fitch and myself. I was not doing anything in the room. It was between sundown and dark. When Laycock came to the window I was in the sitting-room, not in the bedroom; the candles were not lighted. I was standing in the bedroom door when Laycock came to the window; I think I went to get father to play on the clarionet. Had been there a moment or two when Laycock come. I stood in the door until Laycock left. The window is about three feet from the floor of the room, a little more from the ground outside. Father and Laycock did not whisper, if they did I would notice it. Did not see any one outside but Laycock. If they had been opposite the window I would have seen them. If persons stood close to the house at one side of the window, I would not have seen them. I think the pistols were not handed out any other night, as I never saw them handed out but the once. His coming after the pistols struck me as a little peculiar. I never mentioned it to my mother till three to five weeks ago. I have talked with Mr. Frink about it, yesterday and about two weeks ago; never before. He was at our house about two weeks ago. I did not then speak with him about it, nor did any one else in my presence. I have spoken with Delemater about it; have not spoken to Higby about it; do n't know if I have to Miss Clark. Mr. Tull read her testimony this morning; Mrs. Tull and Miss Clark were present. Nothing was said of Miss Clark's testimony. I told Miss Clark I thought she was longer than nine weeks at our house; this was last night at the jail. I do n't remember what time Miss Clark came to our house. Think she stayed about eleven weeks there. No person has ever mentioned it to me that she left about a week before the fair, but after Wescott's testimony I heard mother and Miss Clark speaking about it. Fitch and his wife every year move up stairs during the warm weather; they have done so last year, and for the last three years. Last year they moved up a few days after the 4th of July, and remained there till after the fair. Their bed was not moved up; there is another bed up stairs. There is a safe in the bedroom down stairs. Save the washstand, or perhaps a few chairs, they moved nothing from the lower room when they changed. Their room up stairs fronted on the railway, and my room is north of it. I think there were no other pistols than the one pair in the room. Never saw any other pistols round the house but these. Candles were lighted about half an hour after the pistols were given; it was then light, I could see to sew at a window. After they were handed out, Fitch took his account book and sat at the southeast window, and I sat by him. Think I did not go out before sitting down by him; I may have gone to some other portion of the house, but if at all, I was not gone more than a

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moment; I may have gone for a moment. Do n't know the various portions of the house I went to that evening. Do n't remember all my occupations of that evening; think I did not sew any that evening. Can't tell how long father played the clarionet, nor how many or what tunes he played. Do n't know that I went anywhere that evening. I do n't know how long I stayed in the sitting room that evening. I do n't know as that I went out of the room after the pistols were handed out — may have gone to the kitchen and returned. I went to the room from the kitchen; do n't know who, or if mother, was in the kitchen. Laycock came from the north to the window; I saw him coming; the window opens on the yard. No path to the window; persons are not in the habit of coming to that window on business. Do n't recollect of any person ever before coming to that window. I do not think Fitch had a revolver then; think he got the revolver when he came to Detroit; think he has had it only about a year. The revolver he kept in a drawer, not with the others. He had two dirks ever since I recollect, but I do n't know where he kept them. He had two double-barreled guns, that he kept behind the door in the sitting room. Do n't recollect his having a rifle. Do n't recollect how soon after Laycock was there, we retired that night. We generally retire about nine o'clock. The window was up when Laycock came. Do n't remember who retired first that night, or who lighted the candles. Do n't know what hour Fitch and his wife retired that night. I could hear them in my room if they talked in the room below; do n't remember hearing them talk that night; do n't recollect if they were still up when I retired, or if they were up when I came down next morning. When company came they still continued to room up stairs. During warm weather they always room up stairs, without any exception. In no instance do I stay away all night; I once stayed one night last summer with Miss Joy, in Jackson, after the State Fair; that is the only one instance I remember in the last two years, save the time at Delemater's, and a night last winter at Hudson's. I do n't recollect a single instance of sleeping below, even when company was there, during the warm weather. Just before the State Fair, a lady served there, (Miss Griffith,) and slept there three nights; she slept up stairs. I have spoken a great deal lately about coming here as a witness. When Frink saw me, he put some, but not all the questions put to me here. I never wrote it down save the time I sent it to Frink. I have spoken to a number of persons and said I was afraid to come to court; said so to Mr. Tull. Never said I was n't afraid to come, that I had it written down, and mother helped me.

I know Miss Euphemia Coy. I know Michael Coy.

Miss Coy came to the Centre about the third of last June, and Michael lived there then.

Question — Did you, at the house of Michael Coy, about the third of June, at Michigan Centre, say to Miss Coy, "I am going to Detroit soon, as a witness for father?"

Answer — I do not remember of saying that, or any thing like it to her; would recollect, if I had.

Question — Did she in reply say, "Are you not afraid of going into court and being a witness, where there are so many men, or so many persons?"

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Answer — I think if she said so I would remember. I do not remember her saying so; but she might have said so.

Question — At the same time and place did you say to her, "No, I have got it all written down, and my mother has helped me?"

Answer — I did not say that, or any thing like it.

Question — Did you not say to her, "I know where my father was almost every day and hour for fifteen days before he was arrested?"

Answer — I told her I knew where my father was from the time he came from Lansing till I went to school at Leoni.

We were then speaking of the arrest, and I may have told her I expected to come to Detroit as a witness, but did not say what I was, to prove.

Father wrote mother a letter, and wanted us to remember where he was for two weeks after he came from Lansing, and until his arrest; the letter was written from the jail; I do n't recollect if he asked us to keep a written memorandum.

Before his arrest, he never asked me to keep a written memorandum of where he was.

Question — At the time and place mentioned, did you say to Miss Coy, "My father requested me to keep an account of where he was, and what he had been doing, for some time before his arrest, and I have done so, and can tell it in court?"

Answer — I do n't remember whether I did or not. I may have told her he wanted me to remember where he was after he came from Lansing, that I had done so, and could tell it; I think I said this to her.

At the time father gave the paper to Laycock, he said, "Here 's some." When Laycock said he wanted to borrow the pistols, father made no reply, but wiped and handed them out.

Laycock did not say what he wanted with the pistols or the paper. The pistols were kept on the desk. I have given all the conversation I heard between Laycock and father; thought it unusual, but never spoke of it to mother or any one till after the arrest. When Laycock came to the window, father was at his desk; I had hold of his book, about ten feet from the window.

Hiram R. Johnson — I keep the hotel near the railroad, in Detroit; did so at the time depot was burned last fall. Saw the fire when it appeared very small; was then in the old wooden part of the hotel, on the side towards the depot, in a room in the third story, from which I could see the whole length of the north side of the depot. Could see the entire north roof and the three cupolas. The room I was in was on a line about, or forty feet or more, north of the north wall of the depot. At the time the fire broke out I was not up. Do n't know which room I went into when I first saw it; the fire, to the best of my opinion, was burning out of one of the skylights, in a flame two or three feet high, and a dense smoke from the cupola, through which there occasionally flashed a red darting flame. The skylight was on the north side of the roof, and seemed to me right by the cupola, and perhaps two-thirds of the way between the ridge and the eaves; I did not leave the house that night. Heard the alarm, and the depot bell ring about the same time; I then got up, and while dressing, Mr. Whitney, (my clerk,) came to my door, and said the depot was on fire; then went to the third story

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of the wooden part, where I saw the fire as described. I heard none, and think there were no engines there at that time; at that time I slept in the second story, in a room fronting on Woodbridge street; the fire could only be seen there by reflection. I went through a hall into the wooden part of the building; cannot be certain that I went into the third story; think I did; but it may have been the second story; could see just as well from the second as the third; from there I went back into the house to wake up my help; was busy with other matters securing my own premises; but several times looked out at the fire. The cupola was on fire when I first saw the fire; none of the exterior of the cupola was on fire when I first saw it. There was a dense smoke from the cupola, with fire flashing through it from below. The alarm I spoke of, was a cry of fire — it woke me, and I got up.

Can't tell if Mr. Jones was at my house that night without —referring to my books.

Cross-examined — My house is close to the depot, and I was a little excited. When I first looked out the fire was creeping through the skylight, and dense smoke in cupola, and the fire flashing through it; the cupola was boarded up.

To a Juror — Was there when depot was built; there was plaster under the shingles, but did not notice its effect that night.

Abel F. Fitch — Called, and before sworn says, he is fifteen years of age, and is then sworn and testified. Live with Mr. Fitch, and have lived with him about a year. Remember a hole in the wall, under the barroom, in my father's house; in the afternoon of Christmas day, I tried to get in through that hole on the south side, to get some money that was lost there, by men raffling for turkeys; there was a shooting match there that day. Did not succeed in getting under, for the reason that the hole was not big enough. Got my head in, but could get no further. That hole is now bigger than it was then.

No cross-examination.

Henry E. Francisco — Live in Grass Lake, near a signal station. Live at the place called Franciscoville. Know Phelps; first knew him about eight years ago. For a year or two prior to last April, he lived in Sylvan, about a mile from me; recently, and before April, he lived on the premises of Mr. Metcalf. Am acquainted with the premises, and have been at the house occupied by Phelps, once before he came there, once while he was there, and twice or three times since he left. Was there yesterday. The hovel or stable is four to six rods north of the house, and about twelve or fifteen rods from the road that runs north and south. The manger is on the south side of the hovel; the manger extends pretty much the whole length of the hovel, and is about two or three feet high from bottom to top; there is an opening directly above the manger, as if a log was taken out; the opening is ten or twelve feet long and about one foot deep; the opening is about the centre, and do n't extend to either end of the hovel. The gate that leads to the house is so situated, that a person stooping over the manger could be seen through the opening. Yesterday I stood at the gate, and got Mr. Whiting to go in and stoop over the manger, and I saw his shoulders and arms. Had this done at the request of Delemater. Smith, Whiting, Delemater, and A. Metcalf were there; the gate lies not square, but diagonal from the

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opening, about twelve rods off. The hovel is only one story high. Before yesterday I passed there last about a week ago. Can't state that there was any change in the structure or arrangement of the hovel yesterday, from what it was when I saw it on prior occasions.

Reynold's crossing is about one mile east of Francisco's station. I saw a man named Luce put in cattle guards a little over a year ago at Franciscoville. And about a year ago, a man named Stow took up one, twenty or thirty rods west of our place, and moved it fifteen or twenty rods east, and put it in, and also put one in on the side track. There was one put in at Reynold's crossing over a year ago, and one other previously to a year ago last spring; a year ago last spring noticed one in there, and one lying there not put in; don't know as to these two, but have since noticed that in others the side-pieces are white-wood, the cross-pieces oak; the side-pieces are about twelve or fifteen feet long, twenty inches deep, and six or eight thick.

I saw a broken side-piece of white-wood lying about half a mile west of the crossing where I live; I lived at Franciscoville six or seven years, and in the vicinity some seventeen years. Have been engaged in different branches of mercantile business.

The court being about to adjourn till afternoon, Mr. Van Dyke suggests to the court, that in view of the long time occupied by this cause, it might be expedient to hold evening sessions.

Mr. Cook, (a juror,) suggests that the court commence its sessions at an earlier hour than nine A. M.

Court — I will determine the course to be pursued this evening; it is desirable that the sessions should be lengthened; it is usual to hold court for more than six hours each day, and unless in case of sickness, it should be done.

July 17, P. M.

Henry E. Francisco, *cross-examined* — Delemater, Smith and Whiting were with me at the hovel yesterday. Started from my residence with them; got to the hovel from one to two P. M.; the hovel fronts south or south-east; the end that has a door in, is towards the road; the door is in the north-east corner. Whiting was the one who went in when I stood at the gate. Was on the road side of the gate; the gate is on the north and south road; the hinges are on the south side of the gate; stood a little more north than the centre of the gate; could see Whiting; he was pretty well towards the west end of the opening; could see his head and shoulders. Think I could see him if he was in the centre of the opening. Did n't measure, but think it is about twelve rods from the gate to the hovel. Did not measure the opening, but think it is about one foot wide. The first guard was put down at Reynold's crossing, on the west side, eighteen months or two years ago. Early in the spring I saw one lying on the east side of the road. Frequently pass there, and since the last one was put down, have not seen a cattle guard there, or any pieces of one. The last one was put in about a year ago last spring.

Justus Goodwin — Reside near Union City — at this time overlook a

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farm. Am a lawyer by profession, but do n't practice; was superintendent of state prison; entered on the duties of that office the 1st of May, 1849, and continued there till May last. Know Wm. D. Westcott; he applied to me for a situation in the state prison; the application was oral, and also by a written petition; my impression is he so applied about 1st of June, 1850. The oral application was sometime previous to the petition. In the absence of the inspectors, after July, I appointed him a guard temporarily. He was never an officer about that prison, and he never was even appointed a gate-keeper there. Westcott brought me a letter purporting to be from Mr. Brooks, not far from the first of July, 1850. The letter was directed to me, and was for me; do n't remember if it was to me officially or not; it was delivered to me by Westcott, in or near the old prison office, on the prison grounds; the gate is about a rod from the office, and there were several people about the gate; some of whom were in a position where they might have seen the letter, but can not say if they saw it delivered. The letter was there talked about between Westcott and me, and neither of us tried to keep our conversation secret. I was then agent of the state prison, and acting as such; had a general, but not particular acquaintance with Brook's handwriting.

My recollection is, that, at once, when I received the letter, I sat down and answered it, and then put it in the stove and burned it; but it is possible I put it in my private drawer; have since searched for, and could not find it; my recollection and belief is, that I burned it. When the letter was delivered, Alonzo Ferris, the gate-keeper, was within a rod of me. Do n't know certain whether the letter was delivered before or after the 1st of July; in June, Ferris was gate-keeper; on the 2d of July Barber had the gate, and, after the 2d, Tuttle. Whoever was keeper of the gate was there, but can't say which of the three, as I do n't know the exact date when it was delivered. The guard over the gate was also in sight. Do n't know whether the guard there was Purdy or another; the letter was given in the forenoon, but can't state whether Purdy or the other was on duty that forenoon. While I was writing the answer, I heard Westcott speak to some one outside of the door about the contents of the letter; what I heard him say was something about going to hunt up a lost trunk. Never nominated Westcott to the position he applied for; he applied for the position of keeper; that I refused, but appointed him guard, ad-interim, between the session of the board. At that time, the board met the first Wednesday of each month. Westcott never entered on the duties of guard; it may have been three weeks prior to a meeting of the board, that I appointed Westcott.

Question — Did you give that letter or its contents to Fitch?

Objected to.

Van Arman — It has never been proven, or sought to be proven, that he sent the letter or its contents to Fitch; on the contrary, the entire proof was, that Gleason conveyed the knowledge of the letter to defendants. Our witness, Phelps, did say, that Fitch told him that Goodwin had shown him the letter, and to prove he did not send it, do n't contradict the statement of Phelps, that Fitch said he did.

Court — The testimony does not seem of any importance; but I will hear it.

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Seward — The fact is in proof that Goodwin sent the letter, by the statement of Fitch; now, we only seek to disprove the truth of that statement. If I was sued on a note, and it was proved that I admitted I signed the note, I could still prove I did not sign it.

Witness — Never had any communication, oral or written, with Fitch, till after his arrest. Think the letter was burned; have never seen it since; remember all its contents.

To Van Dyke — Searched all my papers for that letter; was at the prison and searched the drawer. My impression is, I burned it; whenever I did not burn letters, I put them in the private drawer, where I searched.

To Frink — Was intimately acquainted with the handwriting of Brooks. Had seen him write, and had other correspondence with him. Believe that letter to be his handwriting; the substance of the letter was, that he wished to employ Westcott for a short time in the business of the railroad company; that the business was important for the company, and might be for the public, and asked me to excuse Westcott for a short time from his post in the prison. I replied in effect: if they wanted Westcott's services they could have them, without changing or altering any of his relations to the state prison.

B. H. Curtis was my deputy at that time.

Cross-examined — Was agent of the prison from the 1st of April, 1849, for twenty-five and one-half months. About June, 1850, received Brooks' letter. There was a fire in the stove every night at that time for the guard. Have a general recollection that we had a fire in the stove the morning I got the letter. The petition for Westcott was left at the prison. Did not take it away. Pease succeeded me in the state prison. Never lived in, but have been a few times in Connecticut. Never showed the letter to any one, but communicated the contents of it to the deputy, the clerk, and inspector, as I thought they ought to know that he was excused. Curtis was deputy, G. Bloomfield was clerk, and the inspectors, who were at the next meeting. Told them the contents, and the business Westcott said he was going on. Have no recollection of showing the letter to Bloomfield, but he may have seen it, as he may have been in the office when I answered it. If I had shown it to any one I would recollect it, and I have no recollection of showing it to any one. At the time I received it, I did not converse with many persons about it.

Have lived in Pennsylvania. Have talked with H. L. Spaulding, in Marshall, about the letter. Told him the letter was of no importance, and that if I had published it in all the papers of the state it would communicate no fact.

Question — In October or November last, at Marshall, did you tell Spaulding that no man ever saw the letter, that you locked it up in your private drawer?

Answer — Told him I either burned the letter or locked it up in my private drawer, and that no individual had, to my recollection seen it.

Know J. E. Beebee, a contractor. Never read that letter to him, or before. Never read it before him at Bloomfield. He never said to me, at one time, throwing the letter on the table, if that was my communication

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or letter I would keep it secret, or take care of it. This did not take place at the time, or within a few days after I received it at the office in the state prison. I have no recollection of anything of the kind; if it did occur I would remember it. Have no recollection of saying that I had enough of business of my own without attending to that of others; if I had so said, I would remember it, I think.

I knew Mills Barbour while I was in the state prison. He was connected with the state prison all the time I was there; he was guard, and until some time last fall, the guards occupied the office. Barbour continued in the office of guard until he was arrested; it is the best of my recollection that I never read that letter to Higby, but I may have stated the contents to him.

I showed Spaulding my private drawer at one time. Think I did not say it was the drawer in which I put it, and it was stolen; I said if I had not burned it, I put it in that drawer, and if so it had been stolen. I either spoke of its being burned or destroyed, to him. Have no recollection, and do n't believe I ever read the letter to Higby, and threw it on the table.

I know McConibal; did not read the letter to him, but may have told him the contents, but have no recollection that I did. Did not regard it as necessary to keep the letter secret — never was asked to keep it secret. Think I did not see Darius Clark at the state prison; have no recollection of seeing him for a month or six weeks, or two months after I got the letter. At that time often called him Knox, believing him to be Knox, the marshal; quite a number of weeks after I received the letter Clark called there. Recollect showing him there anything he desired to see about the prison; within a day or two after I got the letter Clark did not ask me to keep it secret, nor within three days, or a week, nor in three weeks. I can't state the exact time I received the letter, but think it was about the 1st of July. It could not be so late as August; am quite sure it was in June or early in July. Think the first time I saw Clark after I got the letter, was about the middle of August. Never told Barbour the contents of the letter; never spoke of the contents of the letter to any whom I did not suppose opposed to the depredations on the railroad; think I did not speak to over twenty persons about it previous to the arrest of defendants. Gleason was engaged about the prison as agent for a contractor; he knew Barbour. I never wrote but one letter to Brooks in regard to Westcott.

Elizabeth Palmer, sworn—Was seventeen last August. Father is justice of peace. Know Phelps and wife; they were at father's house last winter, between sundown and dark. Stayed till next morning about nine; had one child with them; they said they came from widow Laycock; widow Nelson Laycock; they said they had stayed all night there. It was the Thursday before Christmas. Phelps said he was going to Isaac Hat's.

Cross-examination waived.

Israel R. Brown—Live in Grass Lake; have lived there seven years. Have seen Peeler and Kellogg come into the town on the 11th April, with yoke of oxen, wagon, and stick of timber. They went a little west of Hill's wagon shop, and unloaded on ground of Michigan Central Railroad Company, in fore part of the day, after nine and before eleven.

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Have seen Peeler unload a stick there since; don't know how long, think two days. Remember the day, because trustees of Methodist church had given the church to some singers. Am keeper of the church; staid at home that day to wait on the singers. When Peeler and Kellogg came up I talked with them.

Cross-examination waived.

Heber Cowdon—Live in Grass Lake, over a mile from the Centre. Know Henry Phelps; he lived at Metcalf's last winter and spring; was at his house about the middle of last March; went to the house he lived in; had business with him; he owed me; when I went, the door was fast, and Phelps was gone; saw a man through the latch hole; he opened and told me Phelps had gone to Niles. The man was middle sized, light complexion; he was writing; his back to me. Saw two augers, one was one and a half inch. The door I went in at was the back door. Saw blocks of wood and a basket of shavings; think I saw a plane and handsaw, also some pails. The wood looked as though they had them to hew on. Not far from middle of day when I went; was there about half an hour. The man there said Pnelps and wife had gone to Niles. Have been there before; Phelps was most always from home when I went.

Cross-examined— Live in Grass Lake, a little north-west of the depot; have lived there some ten years. It was, I think, on Friday, I went to Phelp's, about the middle of the day; went alone, went from my house. Think on the way I went to his father-in-law's, am not certain that I did, but am certain I passed his father-in-law's. There are two roads; one north and south, and the other east and west. Had been there about two or three weeks before, and stopped at Phelps', (the father-in-law) and found no one at home; the time I found Lake there, there was no one with me, and I do n't recollect any person whom I met going. Sat down and stayed about half an hour. The man I found writing, told me he was taking care of a horse that was lame. Did not see what he was writing; he was writing on a bureau; he was standing up; it was an ordinary bureau. Did not go out to the hovel; he did not tell me what was the matter with the horse. Think he said Phelps would be home that day or next. There was a fire; do n't know what kind of wood they were burning, but saw spikes in the corner, from which I suppose they had burned railroad wood. Saw a piece of wood used to split on; about as thick round as a hat; saw a handsaw, and I think a plane, and a short jointer; both were near the fireplace; and the augers on the other side of the fireplace. The thumb-piece of the door was gone, and I knocked, and he let me in. Looked through the window before I went in, and saw him standing at the bureau, writing. The bureau stood at the left hand as I went in — it was cherry color. Did not see him to work at all with the tools; he did not hide the augurs, shavings, or anything, when I went in; the basket was middling old, and in size about half a bushel. Came down the Territorial road, and then turned on the other road, north to Phelp's. Knocked at the door; the man inside said, who is there? I replied, open, and you 'll see, for I thought it was Phelps, who I know well. Had looked through the window before knocking; the window is to the left of the door; came up the north side of the house to the north door. Do n't know how many rooms in the house below, but there is a board partition, against

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which the bureau stood; do n't recollect to whom I first told what I discovered that day; am a man who talks a good deal; am a married man, have lived with my present wife about ten years, had another wife before. Did not leave my present wife, and go off with another woman. I left a wife in New York, when I came to Michigan. Do n't know how many years she stayed there. Got a divorce from her in Jackson, at the county court, and married another woman. Do n't know that I had any witnesses to get my divorce; got it before Judge Fletcher; Huff was my attorney. I do n't know that I was called on for witnesses.

Van Arman —What year did you get your divorce?

Witness — I 'll tell you, if you 'll wait. I suppose you are in a hurry; I will think.

Van Arman, after a pause — Well?

Witness — Do n't bother me while I 'm thinking. I got the divorce in '39. Came from Harmony, in New York.

I came to Michigan in '36, and went back every year for some years. I know Oliver Lee, there, also a man named Lothridge. Harmony is about thirty miles from Silver Creek; I saw my present wife about fifteen years ago; she was then living with her first husband; he died in a few years after; and a few years after that she and I married.

Van Arman— Did you cohabit or have intercourse with your present wife while the divorce was pending?

Witness — I am not an educated man, and do n't know what you mean, unless you explain.

I did not live with my present wife as if we were married, before I got my divorce. Before I got my divorce I boarded two of my children with her, and went there occasionally, as any one would who wanted to get a wife. Have a divorce from my first wife; have not belonged to any church since I came to Michigan. Know I ought to belong to one, as well as your honor, but I do not.

When I looked through the window and saw that man, he was not in bed; he was standing by the bureau; I am sure of that, and I suppose he was writing; thought he had his clothes on when I saw him through the window; am as sure I saw him through the window, as I am of any thing I have sworn to.

William Champ — Live in Detroit. Knew George W. Gay. Some time in September I saw with him two notes of fifty dollars each, made by Calvin Goodspree; they were payable in October. He offered to sell me the notes, and I took a memorandum of them to make inquiries. Could not learn much about Goodspree, and did not buy them.

Cross-examined — The notes were payable to George Gay. Do n't recollect the date of the notes. Ascertained that Goodspree was not a responsible man, and therefore did n't buy them.

Stephen Whiting — Reside in town of Grass Lake. Known H. Phelps some two years or thereabouts. He has resided in Sylvan latterly, on Metcalf's farm. There is a log stable on the premises, in a corn field north of the house occupied by him, twelve or fifteen rods from the gate on the road that runs north and south; the stable door is north-east; a manger on the south side; an opening over the manger, six to nine feet long. Was there yesterday; saw Eddy Francisco go into the stable, from the gate where I stood. The corn was lower between me

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and the opening, than between me and the stable door; from the gate I could see a man in the stable; Smith and Francisco went in, and through the opening I saw them lift hay out of the manger and throw it over. Never was at the hovel, but when Phelps lived there, in March and April; I often passed, and never saw anything between the road and the hovel.

Cross-examined, by Mr. Livermore — Smith, Francisco, and another gentleman, asked me to go there yesterday, and we went up in buggies from Fletcher's store. Francisco went into the hovel first; there is but one door to the hovel; that and the opening I have mentioned are the only openings in the hovel; the opening is about from two to three feet high; I think the manger not as high as the opening; the opening is about from six to nine feet by one foot. The hinges of the gate are on the south side of the gate; I stood a little north of the center of the gate; the persons I saw inside were about the center of the opening, and I could see their heads and shoulders. I think they got out through the hole, but I saw them when inside; they, when inside, had their heads within five or six inches of the opening. There was only one in at a time. I do not know if I could see in the whole length of the opening. Francisco had on a darkish colored coat, the other had a light colored coat on.

Hiram Smith — Reside at the depot at Grass Lake, have lived there over six years; know the Metcalf premises; the hovel is six or nine rods from the road that runs north and south. I was at the hovel yesterday, to examine it; the manger is on the south side, and does not run the whole length of the hovel; I stood at the gate, and saw Whiting in the hovel, bending over the manger.

No cross examination.

Anson H. Delamater, recalled — I was at the Metcalf premises yesterday with Mr. Francisco and another man; went to examine the premises and hovel occupied by Phelps, and to ascertain if a man standing at the gate could see one in the hovel; I tried the experiment, and found, that from the gate I could see the head, shoulders, and arms of one bent over the manger.

I recollect the state fair in September last. I was at it, in Ann Arbor. I took the cars at the Centre to go to the fair, and Fitch with me; this was the first day of the fair. Mrs. Fitch, my wife, and Fitch's daughter came to the fair the second day; the fair continued three days; I returned home the last day of the fair. Mr. and Mrs. Fitch, their daughter, and my wife returned with me, taking the cars in the after part of the day; we got to Fitch's in the evening. We had a very heavy load in the cars going home. Do n't remember if Justus Goodwin was on the cars.

No cross-examination. Court adjourned.

FRIDAY, July 8.

Barnabas Case — Reside in Manchester; was an early settler in this state; attended the legislature last winter. Did not see him converse with Phelps there. Have a faint recollection of seeing Phelps there. Have known Phelps since 1840, and have some knowledge of his

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reputation for truth and veracity. It is not good. From that reputation I would not believe him under oath. I have resided in the state since 1833, am a farmer, and fifty-one years of age.

Cross-examined— Don't know in what part of Sylvan, Phelps lived; knew him in '40; had no transactions with him; knew him next at Manchester; he then resided in Sylvan or Sharon, six or seven miles from me. This was in '42 or '43. I was then engaged in distilling. He was then occasionally at Manchester, and I saw and dealt a little with him, but did not know him much. Continued to know him from then until he went to Jackson. Have seen him only once since he went to Jackson. I have had no acquaintance with, and have not heard him spoken of since he went to Jackson till these proceedings commenced, and I speak of his reputation before he went to prison.

Re-examined by Mr. Seward—Were you a friend of Phelps last winter? Did you send to Michigan Centre any copies of the State Journal containing the report touching Phelps' application?

Objected to, the objection sustained, and exception noted.

Michael Turner— Have resided in Sharon, Washtenaw county, since 1832. I did know Phelps a few years ago, but have not seen him lately. I am acquainted with him; knew him in Sharon when he lived there about eight years ago. I believe he has not resided there for the last six years.

Question— Did you know his reputation for truth and veracity?

Mr. Fraser objected. The time is too remote— we seek his present reputation— his reputation six years ago is no criterion.

Mr. Seward argued in favor of the admissibility of the question.

Court—To speak of reputation, a witness must know his present reputation in the neighborhood in which he lives, or among those who associate with him; after the present reputation is shown, it may then be traced back any length of time.

Mr. Van Arman stated, that as the prosecution were willing to give any latitude in going into the character and reputation of Phelps, they would waive all technical objections, and suffer the defence to go into an inquiry as to his character at any portion of his life, and in all places, with the understanding that the prosecution may also have the privilege of giving proof of his reputation at any period of his life, and to the same extent.

Court—As the parties agree to extend the rule in this instance, the question may be put; though, if the objection were insisted on, I would sustain it.

Witness— I resided in Sharon in 1832; at one time Phelps resided three miles from me, and again about five miles from me. Think I know his reputation in Sylvan for truth and veracity. It is bad, I think. I know his reputation in Sharon for truth and veracity. I think it is bad. From that reputation I would not believe him under oath. I am a farmer; I hold no public office at present, but was justice of the peace for about twelve years, since 1832.

Question— Did Phelps, while you were justice of the peace, appear, and transact business in your court?

Objected to.

Mr. Fraser— They cannot go into individual acts or knowledge.

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Mr. Seward concedes the rule, but contends that, as the other side can go into minute details to show a want of knowledge, we can go far enough to show general and extensive knowledge.

Court — That will merely be fortifying your own witness before he is attacked. As there may be a large amount of impeaching testimony in this case, it is necessary to adhere to the rules and confine the examination within its legal limits. I will adopt the rule, that you may ask the witness as to his occupation, &c., previous to the general question as to reputation, and stop at the answer to the general question, unless the knowledge of the witness is attacked upon cross-examination, in which case you can re-examine, to fortify the witness, and show the extent of his knowledge.

Messrs. Van Dyke and Van Arman, on behalf of the prosecution, state that, with the permission of the court, they will throw the doors open, and waive all objections to any questions touching the reputation of Phelps, as they are anxious the jury should see his character just as it is and has been, the prosecution receiving the same latitude, and the concession to extend only to the case of the witness Phelps.

Witness — Phelps was often before me in business transactions, while I was a justice of the peace.

Cross-examined — I still reside in Sharon, near the west end of the town, and about five miles from the residence of Phelps in Sylvan. It is about three years since I ceased to be a justice of the peace. I have seen Phelps only once since he came from the state prison, and then not to speak to him. I have heard of his being in Sharon once since his return from prison, but have had no business with him, and have not heard of his having any business transactions in Sharon. He was about five years in prison, and, during that time, I know nothing of his reputation. Have been in Sylvan.

Question — Since he came out of prison, what is your knowledge of his reputation for truth and veracity.

Answer — I have no knowledge of what reputation he has established since he came from prison. I have no personal knowledge of his reputation since he came from prison — since he came from prison, and before the arrest of the defendants, I can't mention anything I have heard of him.

I think before he went to prison, he lived two years in Sharon, during which time I saw him a hundred times; those were the two years immediately before he went to prison. I was justice of the peace those two years, and he appeared, for plaintiffs or defendants, before me, four or more times.

Question — Before he went to prison, what, and from whom, did you hear anything of his reputation for truth and veracity?

Answer — I heard Aaron S. Bell, of Sharon, say he was not to be believed, on his oath or otherwise. This was about a year before Phelps went to prison. Can't say where this was said. Bell is now here. He was speaking of some litigation before him, in which Phelps took a part for one of the parties. Bell was then a justice of the peace. Do n't remember the names of the parties to the suit. I do n't remember any other whom I have heard speak of Phelps' reputation for truth and veracity.

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Cyrus Beckwith — Am a farmer, and reside in Sylvan. Know Phelps very little; lived about five miles from him when he lived in Sylvan. I have heard people for and against his reputation for truth and veracity, but more against than for him. I hold no public office, but have been a justice of the peace. Judging from his reputation, I think I would not believe him under oath.

Cross-examined — I live in Sylvan, about five miles east of Phelps' last residence there. I judge his reputation mostly from what I have heard since the commencement of this suit. I have heard most about him from Thomas Godfrey, who is here; I heard him speak once or twice. Mr. Simon Smith, Calvin Hecock, Mr. Butterfield, E. E. Conklin, and Stephen J. Chase, I have also heard speak of him, all of whom are here. I conversed with some of them before, and some of them since I came here. Most that I have heard from them has been within a week. I do n't think I did, but all of them expressed the opinion to me, that they would not believe him under oath.

C. W. Tuttle — Reside in Detroit, and did in November last, at the time the depot was burned. That night I was boarding in Johnson's hotel, and slept in a room on the end of the brick part, toward the river, and fronting on the river. Think the room was number seventy-nine: it is about mid-way between the west and east sides of the building. I think the room is on the fourth story. The first I saw of the fire was from my window — I was then nearly dressed. Had been awoke by men knocking at Savinac's door, and giving alarm of fire; from my room I only saw the fire by reflection. I went down and saw a blaze out of a skylight near the centre cupola, and a dense smoke in the cupola. Before I went back to the house I also saw flames shooting through the smoke in the cupola. I stayed hardly any time before I returned to the house. The skylight I speak of was in the roof on the river side. I can't say whether the skylight was nearer the ridge or the eaves of the building. When I saw the fire as above, I was near the corner of the depot, on the river side. It was about eight minutes from the time I heard the knocking before I got where I saw the fire as described. At that time, saw no one there but Mr. Whitney, who was there before me. When I saw the blaze from the skylight, it was not high, and appeared just burst out. The wind was oblique, from the north-west. I have been in the depot, but never when the men were at work by candle-light. I never knew of any preparation for lighting above. I have seen lighted candles below in tin sconces, and have seen lamps carried through.

Cross-examined — My room was on the river side, right hand, down-stream corner — the window opened toward the river. I looked out that window, but could only see the light reflected on the steamer Baltic. Did n't then know if it was the depot or Baltic that was on fire; only saw the reflection of the light when I dressed and went down. The skylight was very near the cupola. I can't say whether it was east or west of the cupola. Can't tell how many rows of the skylights on the roof at that side. The skylight was more than half way down the roof, I think. I can't state if the blaze came out of the skylight before or only after I got down. The cupola was filled with smoke and flame. Can't say if the fire had made more progress in the cupola or at the

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skylight; I just took a glance to see where the fire was, and then returned to the house, and afterwards went into the depot on the other side. When I went into the depot I saw no fire below in it. I saw Gilbert in the street. Do n't know if he went into the building. No firemen there when I came down.

S. J. Chase — Resided in the town of Sylvan, Washtenaw county, for seventeen years; am a farmer, and aged forty-six years. I know Phelps, and his reputation in that neighborhood for truth and veracity is very bad, and, judging from it, I would not believe him under oath.

Cross-examined — I live about six miles from Phelps' last residence in Sylvan. Do n't know how long he lived in that town, but heard of his living there. I do n't know when he moved there or left; think he lived there a year or more. Since his return from the state prison do n't know of his having any other residence in Washtenaw county. I have, since his return, seen him at a protracted religious meeting at Sylvan Centre; also saw him at a baptism there; also saw him a year ago last spring at a religious meeting (Baptist) at Pearceville, near Sylvan Centre; also saw him on the cars last April. Have not known of his having had any business transactions there since his return, or of his being engaged in any business. Since his return from prison I have frequently heard his reputation for truth and veracity spoken of and against. I heard it spoken of at the meeting at the Centre, by Mr. M. Cummings, who said he would not believe Phelps; said he guessed he had not improved much since he went to prison; we were then standing near the water; Mr. Vail and Miss Hunt were there. I think it was while the baptism was going on, that Cummings said so; am pretty sure it was. I think Cummings had some dealings with Phelps. I do not know that he told me at that time that he had deal with Phelps. Think at that time he said he was in hopes of getting his pay. I do n't know what the deal was, or how much Phelps owed him; think it was a debt he owed before he went to prison. Mr. Jacob Shunk, of Sylvan, I have also heard speak of Phelps, since he came from prison and before the commencement of these proceedings. It was at or about the time of the last town meeting. I should presume that Shunk knows Phelps, but can't tell. Shunk said he believed Phelps to be as big a scamp as ever ———. Am certain he said this, and think it was at the town meeting which was held at the house of Mr. Godfrey; did n't see Phelps there. Do n't remember who was present, or in what part of Godfrey's premises it was held. I can't tell how the conversation about Phelps arose. I do n't know as I can particularize any one else whom I have heard speak of Phelps' character for truth and veracity, since his return from prison and since the commencement of this suit.

I was once arrested for assault and battery with intent to commit a rape on Miss Chipman. Miss Chipman is aged about nineteen — no relation to me or my wife; she was working at my house. I was fined for the assault and battery. Do n't know that Phelps took any part in that prosecution against me and for the girl. When I came to Detroit, Butterfield and Chapman came with me on the cars. I guess Butterfield and I spoke about Phelps' reputation. I have had but a very slight acquaintance with Phelps, and never any dealing. Four miles is the nearest I ever lived to him. Do n't remember any particular

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occasion when his reputation for truth and veracity were brought in question previous to the commencement of these proceedings.

To Seward — I was fined some twelve years ago for the assault and battery spoken of. When in Sylvan, Phelps lived about six miles from me, and about four when he lived in Sharon. Do n't know what business Phelps pursued in Sylvan or Sharon.

A. S. Bell — Reside in Sharon, and have done so for fifteen or sixteen years. Am a farmer. Have held the offices of town clerk and school inspector. Phelps occupied a farm adjoining mine; know Phelps and his reputation for truth and veracity; it is bad. When he lived in Sylvan, he lived within four miles of me. Judging from his reputation, I could not give credit to his oath.

Cross-examined — Know where people say Phelps lived since his return from the state prison; knew him most before he went there, and have seen him five or six times since his return, but since his return have not known him much personally: have heard of his business transactions in the county since his return — heard he sold his farm; heard he had some difficulty with his brother-in-law, and a suit with Burnett about a horse. Most of my knowledge was before he went to prison.

Since his return, and before these proceedings, I have heard William Bridge and George Phelps (with whom he had difficulties) speak of him, but do n't know that I have heard any one speak directly of his character for truth and veracity since his return from prison. Have sometimes attended to simple suits: do n't think I ever met Phelps in attending to suits. Am able to recollect what I heard of his truth and veracity seven years ago; but the most I have heard of it has been since the commencement of these proceedings — but had my mind made up about him before.

To Seward — When I spoke with Bridge, the subject of truth and veracity was not mentioned — in the conversation with George Phelps he spoke of his general character.

Edmund H. Conklin — Reside in Sylvan township — am now a farmer: was a tanner; have resided in Sylvan about twenty years, and am aged fifty-four. Have known Phelps: know his general reputation in that town for truth and veracity; it is bad — judging from it, I do n't know that I could credit him under oath.

Cross-examined — This last winter Phelps has lived, or rather his family have lived, in Sylvan; but can't say where he has been. Think it is less than two years since he came from prison: he was in prison less than five years. Do n't recollect hearing any thing of his truth and veracity since his return from prison and before the arrests in this case. Can't say that I have. Before he went to state prison I heard his reputation for truth and veracity spoken of by Mr. Buck, who is here; this was about a year before he went to prison, and there then existed troubles and suits between Phelps and Buck. Since this trial, have heard a great deal said about his reputation for truth and veracity; can't say who made themselves active in promoting talk about it. Phelps was absent four years and over, and since his return, till this case came up, I heard nothing of his truth and veracity.

Calvin Hecocks — Lived in Sylvan since 1830. Am a farmer; know Phelps; live about one mile from where he resided in Sylvan, and about

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three miles from where he resided in Sharon. Am sixty-four years of age. Know Phelps' reputation in that neighborhood, for truth and veracity, to be not good. Judging from it, I could not give him credit under oath. Have held the office of collector four or five years, and was once a constable for a year, and once a justice of the peace. The latter office I resigned, as I did n't want to be troubled with it.

Cross-examined — During the last two years I have lived near him, and have seen him often, and had some little business with him. He was absent at prison over four years, and then about two years ago returned to his family. Since he left prison, and before the commencement of these proceedings, I have heard his truth and veracity spoken of by Mr. Bucks; can't say when, but am sure it was since his return from prison, and think it was soon after he, Phelps, came out of prison. Know Bucks went to California; he went there about two years ago; can't tell if he went before Phelps came out of state prison. There were lawsuits between Bucks and Phelps. Since other witnesses have been sworn to-day, and in the witness room, there has been talk of the testimony given to-day, and as to how the witnesses were examined, and what they said about Phelps' reputation.

Have also heard Ransford Stephenson say that Phelps had taken a false oath, and he would not believe him in the village and town of Sylvan; this was in this year, and think not in the last month or two, do n't know but it was in April, and perhaps it was in May. Do n't know that I can mention a single person who spoke of his reputation for truth and veracity, between his return from prison and the commencement of this proceeding. Can't say that I have heard anything in particular about his reputation for truth and veracity. Know Mr. Beckwith; do n't know but he and I have talked of it since we came to court, but can't tell what we said—do n't remember. Came here with Butterfield.

Sumner Chapman — Live in Sharon, and have, for thirteen years. Farm it occasionally on a small scale. Am aged fifty-five. Know Phelps; when he resided in Sharon there was but one farm between his and mine. Know his general reputation for truth and veracity in the neighborhood; should say it was bad; judging from it, should not credit him under oath.

Cross-examined — Can't state exactly when I first knew Phelps, but it was eight years ago, or more. Have seen him quite a number of times in the last two years.

Since he left the prison, and before the commencement of these proceedings, have heard quite a number speak of his reputation for truth and veracity — Lewis Powell for one. Can't give the day or the month, but within a year have so heard him. Do n't recollect the place, when, or who was present; do n't recollect that any one was present; can't tell what brought the matter up. Powell is a justice of the peace. Circumstances that occurred before he went to prison led to it.

Butterfield and Atkinson came in with me. Do n't recollect who I have told of this matter since I have been here. Have spoken to David Eyres, since I have been here, about it. Think no one has spoken to me to-day, about what has been sworn to-day, but have heard them at the foot of the stairs speaking of who was sworn on this point, but I can't say it was said they were sworn as to this point.

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To Seward — Powell said he would n't believe Phelps under oath where he had any interest. Think no one has told me what any witness has sworn to.

To Van Dyke — It was not Fenn who subpœnaed me. Can't tell when Powell made the remark about Phelps.

Isaac Collins — Reside at Grass Lake, Jackson county, and have since one year ago last spring. Know Phelps; before I went to Grass Lake I lived at Sylvan since 1840. These two towns join each. Am a farmer, and thirty-five years old last April. Know Phelps' reputation, in the town where he resided, for truth and veracity; it is, I believe, considered bad. He has resided within a few miles of me; from his reputation, I would not believe him under oath.

Cross-examined — Was subpœnaed by Daniel C. Fenn. Lived in Sylvan when Phelps went to state prison, and lived there till after he came out of prison. Was there some months, but less than a year, after after he returned from prison. Between his return and the commencement of these proceedings, I have heard persons speak of his reputation for truth and veracity. Henry Francisco is one I have heard speak of it, in that period — heard him speak of it last fall. Some conversation commenced about Phelps, and Francisco said he would n't believe him under oath. Mr. J. Powell was present, and some others; we were threshing in the barn. Winter Cooper, of Grass Lake, was also there. Powell commenced the conversation; did not say he had any trouble with Phelps; he said he had been threshing for Phelps, but did not mention any difficulty. Also, in same period, have heard Moses Metcalf speak of his reputation. It was in May last I heard Metcalf speak of it. Heard J. P. Riggs speak of it, but it was three or four years ago.

July 18, P. M.

Mr. Van Arman, by consent, reads to the jury a copy of the letter of Mr. Brooks to Mr. Goodwin, and the reply thereto, referred to by Mr. Goodwin in his testimony of yesterday; and also a second letter of Mr. Goodwin; the letters are as follows:

Detroit, August 16, 1850.

W. F. Goodwin, Esq., Agent of State Prison, Jackson.

My Dear Sir: W. D. Westcott, who is engaged as an overseer with you, if he could be allowed to retain his place for a couple of weeks or so, without entering upon the duties, he would be of most essential service to us, and probably to the public, in the furtherance of some matters of public interest as well as of the interest of our company. May I ask of you the favor of allowing him to retain his place, and still not take it for a short time.

Your favorable reply will greatly oblige, yours, most respectfully,

J. W. Brooks, Superintendent.

State Prison Office,
Jackson, August 20, 1850.

J. W. Brooks, Esq., Sup't C. R. R.

Dear Sir: Your favor in behalf of Mr. Westcott, is received, and I

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assure you in reply, that if his services are demanded for a time by your Company, or the public welfare, his absence will in no way prejudice any relations he may sustain to this institution.

A general indignation is felt in this community at the perpetrators of the disturbance in Leoni upon the C. R. R.; and a meeting has been spoken of here to express our views and show the scoundrels that they have no sympathy here.

I am truly yours,

J. Goodwin, Agent of the Prison.

State Prison Office,
Jackson, April 28, 1851.

J. W. Brooks, Esq.,

Dear Sir: Mr. Spaulding informed me last Saturday, that your letter to me, touching Westcott, was in the hands of the R. R. banditti — or had been formerly taken to them by Barber and Gleason. Will you be kind enough to inform me whether such is the fact, for if so, it must have been pilfered from my private drawer, where all such papers were kept; and if any man has had such a paper of mine, I want to find out how he came by it, as the same drawer contains all my private contracts, receipts, and letters of passing business. I missed your letter last fall, but never imagined that it contained a word that might not have been published without the least harm.

Soon after I received it, I informed the inspectors and clerk of its general contents, to wit: that you wished to employ Westcott in rail-road business for a week or two, to search for a trunk, as Westcott said; I did so, as a reason why Westcott did not go on duty.

First — Did Barber or Gleason, or either of them, carry such letter to Michigan Centre; and, secondly — Did they show its contents to the supposed depredators. I have always supposed Barber entirely free from that gang. But, as a guard, he had access, last summer, to the prison office, nights — and my drawer was in the office. Have you seen the pertinences of these inquiries.

I heard also last Saturday, that it was reported in Detroit, that prison pistols were found at Fitch's. This is a gross and needless falsehood, as no pistol has been gone a day in the last two years, excepting one, which was lent to Holden, a deputy sheriff of this county, to pursue a runaway criminal. Such reports only tend to discredit, in the public mind, the truth of the accusations against those who are charged with offences of a high and aggravated character.

Our prison is beleaguered with strangers, believed to be associates of Doty. We are bound to KEEP HIM and four of his associates, now in prison, *at all hazard;* and such reports, and the foolish remark of the *Advertiser*, that one man was taken with a gun on his shoulder, as a sentry of the prison, tend to encourage rogues in their efforts to burn the prison, and release the prisoners. For if *honest men* can seize and take away officers *on duty, in charge of convicts, rogues* can do the same. In these exciting and dangerous times, when fire and violence are at work, and unscrupulously used by desperadoes, public journals should be extremely careful how they throw out hints by which rogues will sooner profit than any other class of men. This institution needs and

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demands the full aid of good men in this dangerous emergency. Saturday night, at one o'clock, several men were hailed near the prison wall on the bank side, by our special guard; were fired upon, but escaped. We are prepared against all ordinary emergencies, and shall use all the power of the law to secure our charge.

May I ask a reply to this letter so far as relates to Barber and Gleason.

I remain, very truly yours,

[Signed,] J. Goodwin.

Levi Beebe — I was acquainted with Phelps in the state prison, in April, '49; previous to his discharge from prison, I had a conversation with him, and he then told me he was in prison through the influence of Fitch and others, and that, if he lived to get out, he would make them sweat for it, and give them the same feed they had given him. Am foreman in the machine shop of Phinney & Co.

Cross-examined — It is two years ago last April that Phelps made these remarks, from the 8th to the 15th of April; when I notified him of his discharge, he said he was there wrongfully, through the influence of Fitch and others. Can't say it is very common, but have heard such remarks made by persons in prison. Think my information at that time was the first he heard of his pardon being granted. It was a week or three days before his discharge, near a screw lay, in the second story. Had spoken to Phelps before about business, &c.

D. W. Smead — Live in Sylvan. Know Phelps; am acquainted with his character for truth and veracity in the neighborhood; it is bad, and from it would not believe him under oath.

Cross-examined — Have lived in Sylvan nine years. Did not quarrel with him (Phelps) the first year came there; he would not pay my bill for attendance as physician on his family. He did not say it was because I gave his wife a dose of saltpetre that nearly killed her; he never assigned any reason for not paying; we had not spoken to my knowledge since then; that is about eight years ago; do n't recollect how many visits I made.

Phelps went to prison six years coming September next; since Phelps came from state prison, and before the arrests in this case, can't name any I heard speak of Phelps' character for truth and veracity. Never was arrested for malpractice.

David S. Sweet — Reside at Grass Lake; have resided there two years, previously resided in Sharon for one year, and before that in St. Joseph county for four or five years, and before that in Jackson; am a cooper, and aged forty-five years. I knew Phelps when I resided in Jackson, in 1841. Did not know him when I lived in Sharon. Think his reputation is bad, and from it I do n't think I 'd believe him under oath.

Cross-examined — Came to this state quite a number of years ago. I was in the state in 1837 — in this state first lived in Ypsilanti, and then moved to Sharon; did not know Phelps then, or till I moved to Jackson, and then he was engaged in a distillery at Michigan Centre. Knew him there for a few months. He bought some barrels from me and partners; he paid for part of them, and the balance he has never paid for. The time he bought the first barrels I was one of the firm he bought from, but he bought none after I left the firm; what led me to believe

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he paid was, that he came and got more. Never saw him pay for any of them; saw Phelps perhaps a dozen times while at the Centre distillery; have spoken to him at our shop; my cousin and brother were present. Have seen him in the village in the spring of 1841. Did not at that time hear any one speak of his truth and veracity. Do not know Latty, of the Tamarack house. Have seen Phelps at Grass Lake; he lived on the Metcalf place, and while he lived there saw him a number of times in Grass Lake; within two months have heard Arnold Bell say he would n't believe him under oath. Heard Nathan Eyre say he was n't much of a man, and would resort to anything. I heard Samuel Raymond speak of him within two years, and before the last two or three months, he said he believed going to prison had n't altered him. Heard Raymond say, within two or three months, he would n't believe him under oath. Higby subpœnaed me; Smith and Raymond came with me; do n't recollect on the way speaking of Phelps' truth and veracity. I did n't sign, nor did Higby present me a paper to sign.

Mr. Seward here reads to the jury a printed handbill as follows:

$500 REWARD.

Whereas, sundry evil minded persons, in and about the village of Leoni, have heretofore been guilty of placing obstructions upon the track of the Michigan Central Railroad, in that village and vicinity, notice is therefore hereby given, that a reward of $500 will be paid to any man, who will give such information as will lead to the detection and conviction of any individual, who may have heretofore been guilty of intentionally obstructing, or attempting to obstruct said railroad, and also, that the same reward will be paid for such information as will lead to the detection and conviction of any person, who may hereafter intentionally obstruct or attempt to obstruct, the said road in that village or vicinity.

The same reward will also be paid for such information, as will lead to the detection and conviction of similar offenders, on any part of the road.

J. W. Brooks, *Sup't.*

M. C. R. R. Office, Detroit, August 10, 1849.

James W. Hill — Live in Manchester, Washtenaw county. At present I practice law, formerly I was a farmer. Know Phelps, first knew him eight or nine years ago. Have resided ten miles from him, when he lived at Sylvan; my business did not often call me into his neighborhood, not over three or four times. Am not generally acquainted in the neighborhood when he lived in Sharon. Do not know his general reputation in the neighborhood where he resides; but I know his reputation at Manchester; when I lived in Sharon, I resided about eight miles from him; know his reputation where I reside, for truth and veracity; it is bad — from it I would n't believe him under oath.

Cross-examined — Am personally acquainted with Phelps; his reputation is now bad at Manchester. Have not seen him since he left prison until now, till now have not seen him since he was arrested — do n't know of his being in Manchester, or having any business transactions there for the last two years. Do n't know that until these proceedings were commenced, I heard any one speak of his truth and veracity.

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About seven or eight years ago, I heard Doty and Brush speak of him, and say he had sworn false, and sworn reckless to an affidavit in a certain suit. Can't recall any others I heard speak of it until the last few months. For seven years I have heard nothing spoken of his truth and veracity.

Van Arman — Point out Phelps, as you say you are acquainted with him.

Witness — Do n't know that I can do it; my memory is not very good for faces.

After taking a long look all round, the witness says, "If Phelps is here, he is a good deal changed since I knew him."

Mr. Seward — Look towards the end of the table.

Witness — May be mistaken, but think the man at the table is Phelps. (The person designated, was Phelps.)

Simon Smith — Live at Grass Lake. Am a blacksmith, and aged thirty-eight years. Know Phelps' reputation for truth and veracity; it is bad — from it, would not give him credit under oath.

Cross-examined — No subpœna was served on me. I was requested to come by Delemater, whom some say is concerned in the matter. I lived in Sylvan some eight years ago. I knew Phelps while he lived in Sharon. Since he came from state prison, and prior to the arrests in this case, I do not know of having heard any one speak of his truth and veracity, within that period. Know nothing of his reputation. Have served subpœnas for defendants in this case.

To Seward — I am a constable. Lived there eight years ago, and Phelps lived there also; lived within three miles of him when he was in Sharon. Where I live in Grass Lake, is within four miles of Metcalf's.

H. A. Smith — Live in Sylvan; am a farmer, and aged thirty-seven. Know Phelps, and have resided in the same town with him. Have lived in that town fifteen years. Know his reputation there; it is bad; from it, would n't believe him under oath.

Cross-examined — Am brother to D. C. Fenn — but no relation to Simon Smith, and have lived in Sylvan since Phelps went to state prison; live about six miles from where he lived. Since his return from prison, and last fall at Beckwith's, I heard something said about his truth and veracity; Mr. Clark, Downall were present; we were threshing; they were speaking of horses; some said he would steal, and some spoke of his truth and veracity: can't tell who. Can't name another time, when, within the same period, I heard it spoken of, nor any person whom I have heard speak of it. This forenoon, or last evening, I have spoken with Mr. Higby about it. Have heard something said of it in the witness room. Have spoken with some of the witnesses who have been sworn, but not about his truth and veracity, nor what had been sworn to. Can't tell how often I have heard his truth and veracity spoken of within two years prior to the last few months. Can't state any person or time save that at Beckwith's. Have heard D. C. Fenn speak of his, (Phelps',) character for truth and veracity.

Henry S. Francisco recalled — Reside about a mile from where Phelps lived at Sylvan. Am a merchant, and have lived in that town sixteen years; know Phelps reputation for truth and veracity, in that town — it is bad. From it, do n't think I 'd believe him under oath.

Cross-examined — Was at this trial last week, and came in again

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yesterday. Have done nothing in aid of getting witnesses for the defence. Went to examine the hovel at request of Delemater.

Had some conversation with Mr. Jackson, of Leoni, about the middle of last April, before I heard of the arrests in this case.

Understood the question on the other side to be as to his general character, not his reputation for truth and veracity, apart from his other general character.

In the conversation, I mentioned what Jackson said it was, that he thought he was a man of bad character, and not to be depended upon.

Heard Mr. Dwilling speak of him last week.

Question — Since he came from prison, and before the arrests in this case, who have you heard speak of his truth and veracity?

To this question the witness made no reply, and was told by Mr. Van Dyke to leave the stand.

Harry Hocum — Have resided for twelve years in Sylvan. Am a farmer; know Phelps When in Sylvan, his residence was, part of the time three-quarters of a mile, and the rest of the time one mile from where I lived.

Question — What is Mr. Phelps's general character?

Objected to. Objection sustained, and an exception noted.

Witness — I know his reputation for veracity and truth; it is bad, and, judging from it, would n't believe him under oath.

Cross-examined — Have known Phelps about ten years. Had no trouble with him within the last four years; my son and he had none that I know of. Know of no threat of his to prosecute my son. Was on a visit to New York when he went to prison. Since his return he has worked for me. Since his return, and before the arrests in this case, I heard Mr. Eyres speak of his reputation for truth and veracity, about a year ago, when we were at work on the road; we were speaking to the effect that, if he had conducted properly after he left the prison, persons would respect him. Think his character for truth and veracity was then the subject of discussion. Also, within the same period, have heard others speak of it. Last fall I went into Dwilling's, and heard it spoken of. Was subpœnaed by Fenn. Was witness against Phelps, lately, in the United States Court.

Mr. Seward — What was said, by Eyres about his truth and veracity?

Think we both remarked, (Eyres and I,) that we would not believe him under any circumstances. Can't recall what was said at Dwilling's.

To Van Dyke — At the time I spoke with Eyres, I do n't think we were speaking of a threatened arrest of my son.

A. B. Sweet — Resided at Grass Lake for the last two years. Know Phelps; since he came from prison, he resided at Sylvan, four or five miles from me. Am a cooper. Know his general reputation for truth and veracity, in the neighborhood where he lived; it is bad. From it, I would n't believe him under oath.

Cross-examined — Knew Phelps in 1840; have only spoken to him once in two years; in Sylvan, he lived near Metcalf's, as I heard, in the last two years. Have been in that neighborhood ten or fifteen years. Was subpœnaed by Smith. My brother was a witness. There has been some talking in the witness room. There were some of the witnesses who came in and spoke; do n't know if they spoke of what testimony they

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gave. Phelps' truth and veracity has been a good deal spoken of by us at Andrews' hotel. Since he returned from state prison, I do n't know that I have heard his truth and veracity spoken of, till after these arrests. I have, in Lima, heard his truth and veracity discussed, within a year, and prior to the arrests, at my brother-in-law's. We were speaking of Mr. Clark having lost his horse. My brother-in-law said no one would believe but Phelps knew where the horses were; that was all I heard; that is about all I knew of him within the last two years. It is from that, and some dealings I had with him before he went to prison, that I say I would n't believe him under oath.

Nathan B. Eyres — I have resided in Sylvan since April, '49. Before then lived in Sharon for ten years. Knew Phelps when I lived in Sharon — he lived on the next farm to me. In Sylvan, if he lived at his father-in-law's, where I supposed he did, it was about a mile from me. His reputation was not very good for truth and veracity; judging from it I could n't believe him under oath. I am a carpenter and joiner, and am thirty-seven years of age seventeenth next May. Sometimes farm.

Cross-examined — It is eight or ten years since I first knew Phelps. The first I knew of my age my mother told it to me. For the last two years supposed Phelps lived with his father-in-law. Often saw him there, and believe he resided there. Now live on the next farm to Hocum. We have often spoken on the subject of Phelps' truth and veracity. Was subpœnaed by Fenn. Hocum never spoke to me of his boy being about to be arrested. Saw Phelps a few days after he got back from the prison, between then and these arrests. I think I have heard Hocum and Powell, and a good many speak of his truth and veracity, also Peter Riggs in the fore part of last winter. He was speaking of Phelps, and said he was a bad man, and he wished he was back in state prison — that is about the substance of what he said. I think that he was talking of his truth and veracity. Have also heard S. Chapman speak of it a good many times, five or seven years ago, and last year also. Can't tell where, but he said he was a bad man — that is what he said; also John Butterfield, sometime last fall, said in substance he was a bad man. I do n't know that I can name any other who spoke within the period named. It is from such statements as those above given that I made up my mind as to his truth and veracity.

To Seward — I think Riggs said he was a bad man, he wished he was back in state prison, and he could not believe him at all.

Thomas Godfrey — Resided in Sylvan for sixteen years; am fifty years of age; keep tavern; know Phelps; he has lived about three miles from me, and have known him seven or eight years; I know his general reputation in that neighborhood for truth and veracity; it is rather bad; it is bad; from it I could not believe him under oath.

Cross-examined by J. M. Howard — First knew Phelps at Sylvan, about eight years ago. By reputation for truth and veracity, I mean common report in that neighborhood. I recollect when he went to prison, he remained there short of five years, and came out about two years ago. Since he came from prison and prior to the arrests in this cause, I have conversed with persons there about his truth and veracity; with R. Stevenson for one; I can't fix the time I conversed with him; it was in my

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barroom, and I think prior to the last two months. I cannot name any other with whom I have conversed as to his truth and veracity.

Stevenson said he was acquainted with Phelps, and he did n't think he could be believed under oath. I rest my opinion not upon what Stevenson said, but upon general report. I think this spring or winter I also heard Dixon Burchard speak of him, but am not certain.

To Seward — his character was the subject of general conversation frequently in my bar, though I can not give the names of the persons.

Cyrus Raymond — Have resided in Sharon for fifteen years last; am a farmer, and forty-three years of age. I know Phelps; he has resided from one and a half to two miles from me; I know his general reputation for truth and veracity; it is bad; judging from it, would n't believe him under oath.

Cross-examined — Have not seen Phelps at all for the last two years, nor since his return from the prison, until I saw him here. After his return from prison and prior to these arrests, have heard Louis Powell speak of his reputation for truth and veracity; it was a year ago last spring, when shingling at my house. Also, have heard Mr. Dickenson, my brother-in-law. I can not name any others who I have heard speak of his truth within that period; can't say I have heard it spoken of save by these two in the time mentioned.

Powell was a justice of the peace, and said Phelps had often sworn false before him, and knew it; this was in March or April — never heard that there was trouble between Powell and Phelps; I can't tell how the discussion arose — or if Powell specified the case. Since I have been here, have spoken with the other witnesses about Phelps' character for truth; I presume it was spoken of this forenoon in the witness room, and probably yesterday also, but I do n't know certain; I presume it was, because it has been spoken of so often. I do n't recollect to-day conversing with any witness after he was sworn.

S. B. Raymond — Resided in Sharon for the last sixteen years; am a farmer, and at times work as a cooper; know Phelps. It is eight or nine years since I became acquainted with him; know his character for truth and veracity; it is bad; from it I could n't believe him under oath.

Cross-examined — Had no intercourse or dealings with him for the last two years; in Sylvan he resided three and one-half miles from me; have heard a good deal of his reputation there lately; have heard that of others discussed. Since he came from prison and before the arrests, have heard George Phelps speak of it; have heard others speak of it, but can't name any one else. It was in April, I think I heard Phelps speak: think it was before the arrest, but am not certain. George A. then said Phelps was in Detroit; he said he was a d—d scoundrel, and would swear away his best friend's life for money; he did not say he had a quarrel with him, and I do n't know that they had. I got at his reputation, by hearing people's opinion among the commonwealth of his neighbors. Can't give the name of any other I heard speak of it within the time specified.

To Seward — Geo. A. Phelps is brother-in-law to Henry Phelps, and lives about a mile from my place, he is also cousin to Henry.

Chas. M. Butterfield — Reside at Sylvan; and about three miles of

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where Phelps resided; his character for truth and veracity is rather bad there; from it I could n't believe him under oath. I am a cooper.

Cross-examined — For the last few years, and up to last February, I have resided principally in Brighton, Livingston county; come from there to Sylvan; I have since seen Phelps around there. I learned his reputation from what people said; I had no dealings or any thing that led me to inquire as to his reputation, and never made such inquiries. Previous to the arrest of defendants, and in March, I heard his (Phelps') character for truth spoken of among many that worked there. They were speaking of a job that he took from the railroad, and some of them said that he would never pay the men he employed; that is all that was said. At that time both the Franciscos said, in effect, that he was not a man of truth and veracity. I can't name any other instance, but have heard it spoken of, and I think by responsible men; most of the men there are responsible; my mind has been impressed with the opinions prevailing there since the arrests.

To Hewitt — Did not mean to be understood that I had no opinion previous to the arrests on this subject.

To Stuart — From what I had learned of his reputation for truth, before the arrest, I think I could have sworn that from it, I would n't believe him, and that was based on what I have mentioned I heard.

J. M. Evans — Live in Sylvan; am joiner and wagonmaker; have lived four years in Sylvan, about two miles from where Phelps lived, and am twenty seven years of age. Phelps' reputation in that neighborhood, for truth and veracity, is bad, and from it, I would n't believe him under oath. Know defendants, Burnett and Williams; live about eight miles from Burnett, and ten from Leoni and Michigan Centre.

Cross-examined — I was supœnaed by D. C. Fenn; can't remember any one who has asked my opinion of Phelps' truth; do n't know whether I ever have or not expressed any opinion; did not know what I was brought here for, till I came; do n't know who then spoke to me about it; can't say if I have conversed with any one about his character since I came here: do n't recollect that I ever conversed about it before I came here; presume I have, but am not positive; I learned his reputation from report; I recollect speaking to Thomas Godfrey about it, but can't tell when or where, but it was probably six months ago; I am not sure it was two months ago, or before the arrest of defendants; I think it was in Sylvan, because I have never been in Lima or Grass Lake with him; can't recollect the occasion, or what he said, or what brought it up.

Wendall Buck — Lived in Sylvan about ten years; am a mechanic, and now work on a farm; worked on the railroad six or seven years; am aged thirty years; Phelps lived within two or three miles of me; know his reputation there — it is not good; from it I would not believe him under oath.

Cross-examined — I have been in California; went in April, '49, from Sylvan, to California, on four horses; did not ride all at one time; got some of them in Detroit; I only took one horse all the way to California; I left two of them in this state, exchanged them for others; do n't know that I ever heard of a man named Latty; I traded the horses at a tavern; I did not get information that I was pursued for stealing those

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horses, till after I got home; after I got home, my wife told me there was a story I had stolen them; I made no settlement about it; got home last September, and have since resided in Sylvan. Phelps was not pardoned from prison, or returned to Sylvan when I left. Since my return, and before the arrest of defendants, I have heard Calvin Hecocks speak of Phelps' truth and veracity; have spoken with him since I came here; think I have spoken with him to-day, but not on this subject. Soon after I came from California, I met and talked with him about Phelps' character for truth; would not wonder if it was at his house or mine, think it was. Guess I introduced the conversation, by asking if Phelps had improved; Hecocks said he looked on him as being no better man than before, that he would no more believe him than before.

Before the arrest I also heard R. Stevenson speak of it; guess in the blacksmith shop, but can't remember the date; think there were several present, but can't name one of them. Stevenson spoke in the same spirit as ever, and said he would not believe him under oath. It was said that he was beginning to pettifog again, and the question arose, if he would swear any suit through; don't know if ever I had any difficulty with Phelps, but once; he was a witness in a suit, and I asked the privilege of asking him if he knew the value of an oath; and I spoke to him like a christian; and so all the people who heard me, believed he swore false, and turned in my favor. I could have told you any word I said before I went to California, but I have now forgotten it; you could see in their faces that the people turned in my favor; they were still and silent, but you could see the spirit of change in their faces. The suit was to collect a claim for his father-in-law, and swore out a writ against me.

To Seward — The four horses I spoke of were mine. I bought them; one a gray, the other a handsome pony I gave forty dollars for; when I exchanged, I got an equivalent for them; there was no prosecution against me for them. In the Phelps' suit I was chosen defendant; I was not so voluntarily. At the time of the suit, I had an unpaid contract against old Phelps, for building a house.

SATURDAY, July 19.

Erastus Gay, (son of George W. Gay,) now in prison. My father had three notes due at one time, of fifty dollars, drawn by one Goodspeed, dated the 1st or 2d October, 1849, due one year from date, or 1st October, 1850. My father sent me to collect the notes soon after they were due. I went and saw Mr. Goodspeed; did not get the pay; went to Mr. Mead, and tried to sell one of them; Mead did not know as he wanted them. I sold the note to a man by the name of Carlisle; I got the note cashed for $53.80. Another note my father traded to Tunis for a horse; my father owed him twenty shillings. I sold the other note to Ernst Woodruff; got forty dollars for it. The first money I gave to my father, except one dollar; gave it to him about three or four days after the depot was burned. I gave the forty dollars to my father also; don't recollect exactly when — in November, last part. My father loaned five dollars to Mr. Iscot. My father had a wheat note against Benjamin Morgan, for one hundred and six bushels of wheat.

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Cross-examined — I took only one note to Brighton; that was three or four days before the fire; saw Goodspeed near his house, six or seven miles from Brighton. He lives about there still; he did n't pay the note. I stayed one, two, or three days with Goodspeed, and then returned to town. The depot was burned before I got back. I went right back. My father sent me back; he then lived on Third street. Stayed a week there. Took the note with me. My father had the second of the notes, and had disposed of the third. I sold the note to Mr. Carlisle, partner of Mr. Mead, over Mead's store. He paid me fifty-three dollars and some change. Next day after selling the note, I returned to town, and found my father still living on Third street: this was as late as a week after the fair. I paid the money over to my father; J. J. Cicott was present, and my father lent him five dollars. I went and changed a ten dollar bill for him, to get the five dollars; this was Friday, and he was to pay the five dollars the next Monday. Father bought a wagon for eighteen dollars of it.

The second note I sold in first part of December or latter part of November to E. Woodruff for $40.50, and brought it home to my father the next Monday. As I know of, Mr. Mead never got one of these notes in his possession, and returned a note of my father's for it, neither did Goodspeed. Goodspeed did not offer me one of father's notes for one of these. Goodspeed, when I sold to him, said he had a ten dollar note of my father he wanted to pay out of the $40.50, but I told him father had already paid it.

Orlow H. Fenn — Resided in Sylvan for the last nineteen years. Own a farm, and am a carpenter and joiner. Know Phelps; in that town his residence was seven miles from me; know his reputation there for truth and veracity; it is bad — judging from it I could not believe him under oath.

Cross-examined — My brother is the one who found the block. I first knew Phelps eight years ago: saw him then at Sylvan Centre, but do n't know where he then lived. Can't tell what he was then doing there. I continued to be acquainted with him till he left the neighborhood; can't say how long he was absent, but think four or five years. Knew nothing of him while he was in the state prison. After he came from the prison the first, I saw of him was a year ago this summer; at an election in the fall last year, is the first I remember of seeing him after he came from prison. Do n't remember that I then had any conversation with him there — do n't know where he then lived. Have since heard he lived at Metcalf's. I can't mention any one I have heard speak of the reputation of Phelps. Think it was last summer he got out of prison. I heard he got out of prison, and before election I heard he had gone with Clark after his horses; before election heard nothing else about him. I do n't remember any particular thing I have heard of him since.

Nathan Becker — Reside in Sylvan; am a farmer, and aged forty-seven years. Know Phelps, and his reputation for truth and veracity — it is very bad. Judging from it, I would not give him credit as a witness under oath.

Cross-examined — I lived about three miles from him in Sylvan; after he came from prison he lived awhile at his father-in-law's, and then

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at Metcalf's. I understood he wove some after he came from prison, and then graded on the railroad. He was living with his wife. I knew him at Sylvan, before he went to prison; he was in prison four or five years. Have had no dealings with him since he came from prison, but have seen him often; have known nothing particular about him, but that he had a suit with Frisby; have not heard of his being sworn since he came from prison. Since he came from prison I have heard he was riding back and forward, and the neighbors thought it was on illegal business — before last fall had n't heard of this. I never heard what he did. There was a set of harness lost by Warner, and Mrs. Warner said Phelps had got back, and there were some bad characters round. I have told all I remember to have heard of him since he came from prison. I do n't know as I ever heard a man in the town speak well of him I have told all I can think of, that I have heard of him. I heard some say they were sorry he got back from state prison. Have told all I can think of. Since he came from prison, and prior to the last three months, I have heard something said of his truth and veracity, but can't say if it was before or after these arrests. I had dealings with Phelps before he went to prison; he attended to a suit for me, and did it faithfully; before then he farmed, and I think had something to do with a saw-mill. It is so long ago that I can not name any particular person I have heard speak of his reputation for truth and veracity before he went to prison, nor can I state the place where I heard it spoken of.

Stephen Whiting, recalled — I have lived in Grass Lake for several years, about one mile from where Phelps lived. His reputation there for truth and veracity is bad, and judging from it, I should n't like to believe him under oath.

Cross-examined — Have known Phelps about two years. Before I came to Grass Lake, I lived in New York state. Heard of Phelps there; but never heard anything of his reputation for truth and veracity. I moved into this state six years ago. It is about two years since Phelps came out of prison; heard his reputation for truth and veracity spoken of since then; before these arrests I heard Francisco speak of it — can't tell who was present. I was buying some land in Oakland county of Phelps, and was going to make some inquiries about it, and Francisco advised me not to go, for Phelps was a man who could not be believed. I took him to mean that Phelps had no land. Phelps showed me his patent. I did go, however, and found the land was owned by Phelps' brother. I did not search the records, but heard so. I think it was Crossman who told me so. I think the patent was to Phelps. I do n't know by common report that Phelps owns the land. I heard the land was not occupied, but did not go on it. I think about the same time his father-in-law, Noah Phelps, at my shop in Francisco, told me I had better not spend my money, or go near him, (Henry Phelps.) I regarded Noah and Francisco as men of truth. I can't recollect any one else I have heard speak of his truth and veracity. I understood Noah to mean that Phelps had not the title, or that the land was not as he represented. Can not tell anything else. I heard of his truth and veracity before these arrests, but have heard a good deal since. Since yesterday, no person has tried to recall to my mind what I had heard about Phelps' truth and veracity. Since I came from Oakland, I told Phelps I was on

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the land, but I had not been nearer than three miles to it. I did not get drunk there — I did not get drunk at Chase's tavern in Rose town, Oakland county. I was gone from home four days. Think, in Oakland county I stopped at a tavern kept by Smith. Think I have heard others than the two named speak about him, but can't tell who. When I got back from Oakland, I had some words with Phelps. I told him I went on the land, and it was not as he described, and I undertook to give him a description of it. He then said I did not describe it, and had not been on it. I stuck to it that I had been; he intimated that he did not believe me, and said I was a liar. I had a middling quarrel with him this spring, but if he said I had, I would hate to believe him. I can't recollect that I ever caught him in a lie. I don't feel bound to speak the truth in frivolous affairs, if not under oath.

Seymour Tindall — Live at Sylvan, about four miles from where Phelps lived. I know his reputation for truth and veracity there; it is bad. Judging from it, I would not believe him under oath.

Cross-examined — It is so bad, I would not believe him. I have only known him one year, and spoken to him three or four times. I sold him some hay; he paid for it, and took some, but not all of it away. Am a farmer. I saw him often at Sylvan Centre, before I became acquainted with him; he has lived in Sylvan about two years; he appeared to be traveling round all the time, and they thought that suspicious — that, and being in prison, are the worst I ever have heard of him; that he traveled round, and was in prison, are all I heard of him. I heard R. Stevenson say he was a man who could not be believed — this was about a year ago. Do not know who was present when the question arose. About that time, I became acquainted with Phelps; this was in a blacksmith shop. I have heard others say they would not believe him, but do not remember who. I heard some speak of him while he was in prison, but can't mention the name of any one. I met Phelps at church once, at Sylvan Centre, a year ago last spring.

L. B. Butterfield — Reside at Grass Lake; am a farmer; know Phelps; when in Sylvan, he lived a mile and a quarter from me. I know his reputation for truth and veracity there; it is bad, and judging from it, I could not believe him under oath.

Cross-examined — Have known Phelps since 1842; have heard his truth discussed a good deal recently: there has been some excitement there, and the common speech there is, that his evidence would be broken down. Since he came from Jackson, and before the arrests, I do not recollect that I have heard his character for truth and veracity spoken of, but have since the arrest.

J. E. Atkinson — Live at Grass Lake, about a mile and a half from where Phelps lived at the Centre. Knew him, and his reputation there for truth and veracity; it is bad; judging from it, I would not believe him under oath.

Cross-examined — Have lived in Grass Lake four years. I first lived on Francisco farm, then at Sylvan Centre, and now at the depot. I have no particular acquaintance with Phelps; he bought a pair of shoes at the shop where I was foreman. I know his reputation by report; have heard persons say he was not to be believed. I can't say who. Have heard it said within a month past. Can't say positively, that I

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heard his character for truth and veracity discussed more than two months ago; think I did not three months ago. Heard Francisco discuss it in speaking of this trial; heard Judge Blake speak of it in connection with this trial; and also George Phelps, who was also speaking of this trial. Do n't recollect ever hearing his truth and veracity impeached, until these arrests. I heard he stole horses; do n't know whose. Never heard that he followed a man into Shiawassee for stealing horses, and brought him back. The horses I heard he stole were those he went to prison for; never heard of his doing anything wrong since he left prison.

To Seward — George Phelps said he would not believe him under oath, and did not believe they could find any one who would.

To Stuart — Do n't know that George Phelps concealed Hocum for some time.

Levi Rabbett — Resided at Grass Lake for fourteen years past. Know Phelps, and know his reputation for truth and veracity there; it is bad, and from it I would not believe him under oath.

Cross-examined — Have known Phelps about eight years. I have never been favorably impressed by him. Believe I had a difficulty with him about obtaining pay for some property. Have expressed my opinion about him often. I was prosecuted and convicted in Jackson county; do n't know that Phelps was a witness against me then.

Since he came from prison and before these arrests, I heard his character questioned at Paw Paw, by Alvan Bendick. I do not recollect that there was any one else present. Bendick said he was the blackest-hearted, biggest scoundrel and liar he ever met. The matter arose by my asking him if Phelps had told him certain things about a mortgage. Bendick was also interested in the mortgage matter. I also heard Moses Metcalf speak of his truth a year ago last January, at Metcalf's; there were several there, but I can not tell their names. I went to see Phelps about the mortgage given by Phelps, and which I wanted to sell him. Phelps would n't buy, and I went to Metcalf's, and wanted to see if he would buy it. Metcalf said he had not the means to buy it, and if he had he would not have any thing to do with Phelps; that he was not to be depended upon. I did not then want or ask Metcalf to conceal me, nor seek to conceal myself, nor did I stay any time in the woods. Do not know that officers were in pursuit of me. I hired a man to take back my horse, to save trouble.

I can't recall the names of any others I heard speak of this truth. Can't particularize any other persons or occasions when it was spoken of previous to these arrests.

To Seward — The offence I was convicted for, was assault and battery, and I was fined ten dollars.

To Stuart — I was not indicted for assault and battery with intent to murder Dr. Bingham; there was a complaint for that, but the indictment was only for assault and battery. The case went to the Supreme Court.

Joshua Jones — Resided in Grass Lake for fourteen years; am a farmer, and aged sixty-four; eight or nine years ago knew Phelps, and knew his reputation there for truth and veracity; it was bad, and from it I think I would not believe him under oath.

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Cross-examined — I last saw Phelps when he was in the state prison; have not seen him since he left the prison. His reputation is bad still, at Grass Lake. Heard nothing said of him or his character since he left prison, till after these arrests.

To Seward — I was a justice of the peace, and Phelps used to pettifog before me.

E. F. Hoag — Live in Detroit. Knew George W. Gay, in his life-time. I was at his house occasionally, through the winter, and up to about the first of April. There was one camphene lamp used there. It used to burn in the evening for the last two or three weeks before his arrest. I let him have the lamp, and put it up; the lamp was there mostly all winter. I know camphene was used in it, for I have trimmed it myself. His house was on the corner of Fort, and, I think, Riopelle street.

Cross-examined — The lamp was mine. Mr. Ramsey now has it; I sold it to Ramsey since. I never burned oil in it. It hung against the wall in Gay's bar; there was a glass chimney with a bilge in it. It used to be taken to Gay's when there were dances there — there used to be a good many at the dances. There used to be a Mrs. Smith there. She was married to Smith in Gay's house. Mrs. Gay used to be there, also French Fan and Dutch Mag used to be there, but can't say if she was there when the lamp was used. All such women used to attend there. Ramsay and I rented the house, and had two or three dances there, that was the reason of my lamp going there. Sometimes took the lamp home, sometimes left it there a week.

I kept a house called the Arcade saloon — it used to be called Loafers' Paradise. Bowers kept the bar for me — his real name is Bennett — Tilda Bartlow lived in the next house — I can't tell how often the lamp was left at Gay's — I took it there for the purposes of my dances — and often the dances were broken up. He asked me to let it stay there, and if he kept it, he would pay for it. The dances were broken up about the time of the fight there. I used to trim the lamp, and bought my camphene from Mr. Parker — when I used the lamp I supplied it — know the lamp was used there in the barroom, but do n't know who lit it — this was after the dances were broken up, and before his arrest. Think this was the last of February or last of March — it was before the 17th of March, for at that date I was away from here. I returned before his arrest, but did n't see the lamp burning there after my return.

To Seward — At the time of the dances, there was also a bar kept up stairs, as well as below, and one camphene lamp was used in the ball room, and one in the barroom below; both lamps were mine, and I used to take them there.

To a Juror — It was in the winter I took the first lamp there — did not see one there before, or one at any time, save those I took there.

Erastus Gay recalled — I think it was while I was at Brighton the second time, that the depot was burned.

After my father moved to the corner of Fort street, there was a camphene lamp used there, that was brought by Hoag for his dances; it hung over the bar sometimes; it was taken away, and sometimes was not. It was sometimes used there in the intervals between the balls.

Cross-examined — Was at home during the most of March. There

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were dances in March; was at home the night father was hurt; can't be positive if I was home at a dance before the time he was hurt; went to Franklin the day before or day after Christmas. My father moved to Fort street the week before Christmas, and there were two dances there before I left, Christmas. Came home from Franklin in the middle or latter part of January. Am not positive that there were no dances there after father was hurt; can't recollect if there were or not. The lamps were used there after my father was hurt. After he got hurt, father and mother went to Bill Brown's, and I went to Hoag's. Am in jail for having a buggy belonging to Mr. Long, in my possession, and selling it. I once filled and trimmed the lamp.

To Seward — The camphene I filled the lamp with, I found under the bar, in a tin can. This was in March. There were two cans; the larger had about a quart in it, the small one was for pouring into the lamp, and was near full. Do n't know how they came there.

To Stuart — When I filled the lamp, Tilda Bartlow, said to be Hoag's woman, was then keeping the house. Father was at home, and living in the house; he was not living then at Bill Brown's. The woman who then lived with my father, never was married to him.

L. H. Jones — Reside at Grass Lake. Am a farmer. Know Phelps, and his reputation for truth and veracity in the neighborhood; it is not good; and, from it, I would not give him credit under oath.

Cross-examined — It is about eight years since I knew Phelps: have not seen him since he left prison: since these arrests he has been the common topic of conversation — before, there was little said of him, one way or the other. Can not name any one who I have heard speak against his truth, since he came from prison and before the arrest.

To Seward — I left this state in 1843, and was gone till September, 1848.

To Stuart — Think I heard, but can't be positive that I heard, any one speak of his truth since he left prison, and before these arrests; previous to the arrests, and since he came from prison, I did not hear enough to form an opinion on.

Alvah Clark — Reside in Grass Lake; am a farmer. Know Phelp's reputation in the neighborhood; it is not good; from it I should not believe him under oath. I have been a justice of the peace in that town for eight years, and up to last month.

Cross-examined — I first knew Phelps, by sight, in the summer of 1842. Since he came from prison he has been once or twice at my house. Since he came out of prison, and before these arrests, I did not hear his character for truth canvassed; I speak of his reputation before he went to prison.

James J. Cicott — I recollect of young Gay paying his father some money, fifty dollars, I think. I received five dollars of it, at that time, from Gay.

Cross-examined — Gay owed me at that time; do n't think the five dollars was then stated to be on account of wha' he owed; this was in the fall; may have said if he wanted it, I would let him have it back.

To Seward — I said I wished he would let me have five dollars, and he sent his son out to change ten dollars, and gave it to me.

J. P. Riggs — Am a farmer, reside in Grass Lake; know Phelps, and

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his reputation in that neighborhood for truth and veracity; it is bad; from it, think I would not credit him under oath.

Cross-examined— Was subpœnaed by Fenn. Judge his reputation from what others say, aided by what I know myself. Have heard him under oath; have learned and formed an opinion by hearing others speak of him. He came from prison, I think, a year ago last spring; between his coming from prison, and these arrests, have heard his reputation for truth and veracity spoken of by almost all the neighbors; Metcalf, for one, said he would n't believe him. We were speaking of what had been done in the railroad case.

Heard Mr. Godfrey speak of it last fall, at his tavern, in Sylvan Centre; do n't know who else was there; do n't know how it arose, believe we were talking of some suits he was in. Last spring I saw Phelps one day, and he said he came to attend a suit. At the time Godfrey spoke, he said he would n't believe Phelps under oath; do n't remember what else Godfrey said. This was said since the arrests in this suit, but he also spoke of him last fall, and he said he would n't believe him under oath; heard Esquire Crowel speak of it, between his return and the arrests. Crowel said he would n't believe him under oath; do not remember who was present; think it was in the fall, it was at Crowel's house: do n't remember what I went to Crowel's house for; do n't remember what else was said. Do n't remember any one else but these two that I heard speak of his character for truth, in the period specified. Heard Dr. Smead speak of Phelps, last fall; do n't remember where. Smead said he would not believe him now any sooner than before he went to prison. This was at Sylvan Centre; do n't know what I went there for, do n't know how I went, or who went with me, or if it was a pleasant day.

Saw Crowell last fall at Sylvan Centre. Heard Esq. Frisby, last fall at Sylvan Centre speak of Phelps, cannot tell if it was in the street, or in a house, or how we came to speak of Phelps, or who was present—he said he would n't believe him under oath; they all used pretty much the same language. Can't tell the month. Came to Detroit to-day; was here to impeach Phelps in the United States Court.

John Riggs — Live in Sylvan; know Phelps, and his reputation for truth and veracity in that neighborhood is bad. From it, should rather hate to believe him under oath.

I live about three-quarters of a mile from Reynolds' crossing, about half a mile from where Phelps lived. Have noticed the cattle-guards at Reynolds' crossing; the west one is all oak and the east one white wood, save the two centre pieces, which are oak. Have not noticed broken pieces there since the last of these were put in, which was about a year ago last May. Before that saw one side-piece there, split in two; it was lying on the north side of the railroad and east side of the crossing. Think the piece was split in two; it was of white-wood. Can't say how long it lay there; saw it oftener than once; passed there a number of times, and saw it almost every time before the guard was put in; the piece was five inches thick; can't say how wide, and from ten to twenty feet long.

Cross-examined— Have seen the guard that lay there at the time I saw the piece, since it was put in. Can't say if the broken piece I saw

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was separate. Think it was still connected with the rest of the guard. Have noticed the east side of the guard that is down, and it is broken, but think not quite split in two; never saw a piece there since the guard was put down. When the guard lay there, there was no extra piece for the guard that I saw. Have no recollection of seeing any piece there after the guard was put in. Went away last August, and returned in May. Was, in the interim, out of the state. While away heard a good deal of Phelps, but it was not then I learned his reputation; learned it before he went to prison. Can't state how long it is since he went to prison. He farmed a little before he went to prison, and I believe pleaded law a little. Had a personal acquaintance with him before he went to prison; was then aged fifteen or twenty.

Heard something of his reputation after he came from prison, and before August. Brown Butterfield said he found his oats in his (Phelps') manger. I consider that speaking of his truth and veracity.

Can't state any one else I have heard speak of his truth and veracity before August, since he came from prison.

To Seward — I went in August to Connecticut, and returned in May.

JULY 19, P. M.

William W. Riggs — Live in Sylvan. Know Phelps' reputation for truth and veracity, and from it would not feel at liberty to believe him under oath. Am a farmer, and lived a little over half a mile from where Phelps lived in Sylvan, and two and a half miles from where he lived in Sharon.

Cross-examined — Think it was a year ago last spring that Phelps came from prison. On reflection I think it was two years last spring. Have had business intercourse with Phelps. Have heard his character for truth canvassed since he came from prison and before these arrests; Butterfield and McDowell were present, and last spring. Butterfield said that soon after he came from prison, he (Phelps) went to live with him, and in substance he found that he fed his horse with his (Butterfield's) oats, that he spoke to Phelps about it and Phelps gave his word and honor he had not fed his horse. Butterfield also said he would n't believe or trust him as far as he could see. Have not heard any one else speak of his character for truth, between his coming from prison and these arrests, that I recollect of. I have a good memory. It was close to a fence on my farm I spoke with Butterfield.

Miles Riggs — Lived in Sylvan for the last sixteen years. Know Phelps; he lived within a mile of me at Sylvan. Know his reputation there for truth and veracity; it is bad; from it would not believe him under oath.

Cross-examined — Do n't go to meeting much; do once in a while; went last about four weeks ago, to the Baptist church, did n't see Phelps there. Saw him after he came from prison; think it is not much over a year since he came from prison. Heard people say his reputation was bad; heard Burke say so before Phelps went to prison; heard Dr. Smead say so before he went to prison and since, and prior to the arrest of defendants, at Godfrey's tavern; do n't know how he came to be talking

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of Phelps; it was within six months; do n't know who was present; do n't know if he was speaking of these defendants being arrested on his oath, he may have been, it may have been after the arrests. Can't be positive if he was or was not speaking of these arrests. Do n't know if Phelps and Smead have had a difficulty, but know Smead do n't like him, from his expressions. Smead said he would n't believe him under oath.

Within two or three weeks past have heard R. Stevenson say Phelps had sworn to a lie; guess I never heard Stevenson speak of Phelps' truth but the once. Do n't in the time limited in the question; I never heard any one else speak of his truth.

To Seward — Dr. Smead said he would n't believe Phelps under oath.

John S. Hurd — Reside at Jackson; did live in Washtenaw county, some seven years ago, in the town of Leoni, next Sylvan. Knew Phelps; his reputation for truth and veracity is bad. Eleven or twelve years since I first heard of him. I kept a hotel at Leoni, and also at Jackson. Am now a farmer. From his reputation, do n't think I could believe Phelps under oath.

Cross-examined — When I lived in Washtenaw, Phelps lived in Sharon. I moved from Washtenaw county, in the fall of '40. It may be that he lived in Oakland county, while I lived in Washtenaw county. It is my opinion that he lived in Sharon and Sylvan. I never was at his house while I lived in Sharon. It is a year and a half, or more, since Phelps got out of prison; since he has been out of prison, I have been frequently in Sylvan; have had no business transactions with him, save that he wanted to buy a judgment from me. Do n't know that I ever heard a man say that Phelps' reputation was good. About a year ago, I heard a man named Daniel Jeffries, who now travels as a cancer doctor, speak of Phelps' character for truth; the conversation came up about a bad five dollar bill he said Phelps gave him, and he said Phelps had so often agreed to redeem that bill, and had lied about, and partly denied it. He said Phelps let him have the bill before he went to prison. He did not say that Phelps wanted him to swear to the bill. Had a conversation in Sylvan last summer, with an Irishman whose name I do n't remember. He spoke of some difficulty he had with Phelps, about a yoke of cattle, and said Phelps was the greatest liar he ever met; can't recollect any other conversation in the time specified, about Phelps' truth; wherever I have heard his name mentioned, his truth has been spoken against. A year or two ago, when Mr. Stow lived there, and since Phelps came from prison, I heard Stow speak of him. Do n't remember how the conversation commenced, but Stow spoke of his truth and veracity; he said he did n't believe Phelps had reformed. I am bail for some of the defendants.

To Seward — There are five of us went bail in $20,000 for some of defendants.

William Reynolds — Lived in Sylvan thirteen or fourteen years; am a farmer, aged sixty-six years. Know Phelps — knew him before he was married — I lived seventy or eighty rods from him, in Sylvan. His reputation for truth and veracity is bad; judging from it, I think it would be a hard case to believe him under oath.

I live thirty or forty rods from Reynold's crossing. I saw a cattle

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guard there which was split in two; can't say when I saw it last—think it disapeared soon after the guard was put in. There are two guards there, and it is my recollection that I saw the broken guard there after the other was put in; last spring saw Phelps drawing this stuff from the railroad to his house — they were given to him.

Cross-examined — Since he came from prison, Phelps has lived near me; when he left Metcalf's, he gave me some hay he left in the hovel — he came to me, and told me I might have it. He so told me in April last. I never went to get or look after the hay.

I recollect when he came back to his family, from state prison; I came to Detroit to-day. Mr. Janes and Mr. Fenn subpœnaed me. Between the time he came from prison, and the arrests in this case, I have heard a number talk of Phelps. Henry Francisco is one I have heard speak of his truth and veracity. Don't know as I have heard any one speak of his truth and veracity before the arrests in this case, and since he came from prison. Can't say I have. When I speak of his reputation for truth and veracity, I refer to it before he went to prison, and since these arrests.

To Seward — Last year, and after he came from prison, heard his truth spoken of, and a good deal said of it since these arrests. What Francisco said, was about the logs.

To Van Dyke — What I mean is, that between his coming from prison and the arrests, I heard nothing of his character for truth.

Christopher Overacker — Live in Sharon. Am a farmer, aged thirty-nine years. Know Phelps for over nine years. Reside within a mile or two of him. Know his reputation in that neighborhood for truth and veracity; from it, I would not credit him under oath.

Cross-examined — I have lived sixteen years in Sharon. Have known Phelps some ten years; his character is freely discussed there now. Have been warned against speaking to persons on your side of the room. Francisco told me to be careful who I spoke to. Have had no business transaction in two years with Phelps, save the lending of a pair of shears. Since Phelps came from prison, and before the arrest of defendants, don't know that I heard his character for truth discussed.

To W. A. Howard — Have heard persons speak of his reputation for truth, before the arrests and after he came from prison.

To Seward — Heard men speak of it, but can't say it was a discussion.

To Van Dyke — I heard it spoken of within that time, by Brown Butterfield, and Isaac Godfrey. Butterfield spoke of it at my house. We sat in my door. Butterfield spoke of some wheat he thought Phelps stole from him. Can't tell exactly what he said, but he spoke of not believing him. He said Phelps had taken some of his wheat, and that such a man ought n't to be believed.

The conversation with Godfrey was on the road, in April, before town meeting, which was first Monday. Godfrey said that Phelps had sworn wrongfully concerning a note. I think Mr. Lemn, a nephew to defendant Lemn, was present.

I do n't recollect any other person who has spoken of his character for truth, within the times mentioned.

I am not certain, but think I have also heard David Eyres speak of it within these times. I stop at the Railroad Hotel. Round home I have

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heard more of his reputation since the arrests than before. It was to-day Francisco told me to be careful how I spoke to persons on the other side — he is my uncle. I was subpœnaed by Mr. Janes.

Question — Did you say to any one, that before these arrests you would not impeach Phelps?

Seward objects to the question unless time and place are given.

Court — The question can be put, but if the witness desires he can ask the time and place.

Witness — Then I ask the time and place.

Van Dyke — As I do n't want a discussion with you, you can leave.

To Seward — Judge Francisco said to be careful in talking to persons, that they only wanted to get something out of me. I was speaking to men on a hand car, and I understand him to mean them and the opposite party.

Wm. E. Nutting — Have lived four years in Sylvan, within about half of a mile of Phelps'. Know him, and would not believe him under oath, from what I have heard of him — all I know of him is by general character.

Cross-examined — My own heart tells me not to believe a man who has been in prison. No person but my own heart told me not to believe him. I know nothing of his reputation for truth and veracity.

To Seward — I form my opinion from the fact that he was in prison for horse-stealing.

To Van Dyke — I heard where he had been.

Heber Cowdon — Live four or five miles from where Phelps lived. Know his reputation: it is bad: from it I should hate to believe him under oath.

Cross-examined — Live north-west of the depot in Grass Lake; Phelps lived about four miles from there. Have lived there about ten years. Was sworn before in this case, and spoke about my divorce. Stop at the Railroad Hotel, there are a good many witnesses there. Have spoken with them, but not extravagantly; have spoken to several persons about Phelps' truth and veracity; have not made myself busy talking of his character. Was subpœnaed by S. Smith, who was sworn. Am a military man — had a commission from Gov. Mason, and had a cavalry company in Leoni and round there. Fitch was captain of another cavalry company. Have seen some of the witnesses after they left the stand — there was some talk of the manner of examination, and the questions put to them yesterday and last night. Am at present brigadier-general. Have risen higher than captain. Knew Phelps six or eight years ago. Phelps was a captain also, before he went to prison. The first time I saw him, was at a Baptist meeting. Am not positive I saw him a second time at meeting, but I have seen him at other places, and had dealings with him; he owed me a little, and it is not settled yet. Only remember two persons ——— and ———, speak of his character since he came from prison, and before these troubles. Was at Noah Phelps', and was telling him that he promised to pay me, and he said he thought he was the biggest liar he ever met; this was about ten months ago. The defendant Burnett, was the other. Also spoke with Geo. Phelps and Francisco about him, but do n't remember what they said. This is all I heard of his reputation between the times specified.

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The witness here desires to explain, in reference to his previous testimony, that he is still pretty confident that there was a window in the north side of the house, and that he saw the man inside through it, but he is not now so certain there was a window on that side of the house.

To Stuart — Did not swear before that there was positively a window there, or that I was as sure of that as anything else I swore to. Since then I spoke with Mr. Reynolds, and he told me there was no window on that side.

In my testimony the other day I said I saw the man at the bureau, through the window. Am still very sure I did, but not certain. Am not now as certain I saw him through the window, as that I saw the augers, the shavings, and planes. Do n't know certain that before I spoke to Reynolds any one told me that there was no window there; but some one told me Phelps said I was mistaken about it, and that Phelps had once sworn there was no window there. I spoke with one or two men about there being a window there, and then to Reynolds. Am certain I saw the man and bureau after I went into the house. If a man I had confidence in, swore there was no bureau there, I would n't believe him. I spoke to one of the lawyers about the mistake, and whether I could correct it; he did n't suggest to correct it.

Court adjourned.

MONDAY, July 21.

Mr. A Begole — Have resided in Sylvan for the last nineteen years; am a farmer; know Phelps, and his reputation for truth and veracity in that neighborhood; it is bad, and, judging from it, would not believe him under oath.

Cross-examined — Knew Phelps before he went to prison; only seen him three or four times since; have had no conversation or business with him since, save to pass the time of day with him twice. I stop at Andrew's hotel; have spoken to no one about this matter, but have heard a little talk about it; have not been told the questions that would be put.

Since he came from prison and before the arrests in this case, I do not know that I have heard any one speak of his truth and veracity. I judge his reputation by what I heard before he went to prison, and what I have heard since these arrests — heard nothing in the interval.

Amos W. Davis — Have resided in Sylvan for the last eighteen years. Am very little acquainted with Phelps; am some acquainted with his reputation for truth and veracity. I know it — it is rather bad; judging from it, I think I would not believe him under oath.

Cross-examined — Am a farmer, and live about six miles from Phelps' residence. Never spoke to him, or had a business transaction with him. Do n't recollect any one in particular who I have heard speak of him prior to these arrests; but I have heard a number speak of his reputation, but can't particularize any one. Think I heard D. C. Fenn speak of it since the arrests. I do not know that I ever did hear

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any one speak of his reputation prior to these arrests; before the arrests I do n't know that I ever heard his reputation for truth and veracity questioned.

To Seward — Do n't know that I ever, either before or after he went to prison, heard his reputation for truth and veracity questioned, till after these arrests.

Fanchild Farrand—Have resided in Jackson since March, '37. Knew Phelps in Jackson and Michigan Centre when he resided there. Know what his reputation for truth and veracity was while he was at the Centre; it was bad; judging from it, I would not believe him under oath.

Cross-examined — Know what his reputation is at the Centre, Leoni, and Jackson. I was supœnaed by John Delemater. I was not exactly supœnaed, but Delemater came and wished me to come as a witness; have been here since Friday last. I have seen some of the witnesses in this case, but do n't know that I have conversed with them about what they should swear to. Have not made myself busy particularly about this case. I told some persons the point I was to testify to; some of their names I did not know; one was Hind. I have spoken to persons about his reputation since I came here. Do n't know how long he lived at the Centre. I know he was doing something there; do n't know if he was over three months there; that was in 1840, and I speak of his reputation there then for truth and veracity. I heard Mr. Rice and Mr. Rood then speak of his reputation; after, heard it spoken of in Jackson. Do n't know that he ever lived in Jackson. Never spoke or wrote to Dr. Clark; I wrote to the prosecuting attorney about this case.

Question —What did you say to him? and did you proffer your services in this case?

Mr. Seward objects, that the letter, being the best evidence, should be produced.

Van Dyke —The object is to test his memory, but I do n't care about the question.

Witness — Have seen Phelps in the last two years, and, prior to the arrests, once certain, on last Christmas day, at Filley's, and, I think, oftener. In that period, have not been in his neighborhood, except to pass through it; in the same time, have heard no person speak of his truth and veracity; think he went to prison in 1844. In the period specified, I do not know I ever heard any one mention his name.

Mr. Seward — State when and where you acquired your knowledge, and all you know of his reputation for truth and veracity.

Mr. Van Dyke objects that the cross-examination has not been such as to authorize the question.

Court — I will allow the question.

Witness — My first knowledge was obtained while he was living at the Centre; subsequent to then he had a bad reputation at Jackson, and it was a good deal spoken of at the time he was prosecuted; have also heard it spoken of since the arrests in this cause, and it is from this knowledge that I speak of his reputation. I was county clerk of Jackson county, in 1841 and 1842. Can not state the words I heard Mr. Rice use, but knew that Phelps' character was the subject of conversation, but it is so long ago that I can't remember what was said. I heard

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Root say Phelps was the biggest liar he ever met; he and Phelps had some business transactions.

To Van Dyke — I saw Phelps while I was county clerk. I only know of the one prosecution against Phelps, the one he went to prison on. I do n't know about Rice, but, when Root spoke of Phelps, he was discussing some troubles that arose between them in business. Rice may have been concerned in the same business; do n't know if he was or not.

George Sumnet — I know A. F. Fitch, defendant; I saw him in Detroit on the 14th or 15th of February last, I can't state which; either after dinner or tea, I met him at the steps of the Exchange, and in the evening saw him again, at the fireman's fair; I saw him twice that evening at the fair, I think. When I first met him at the fair, I merely spoke a few passing words to him, and, on the second time, spoke more with him, and apologized for not having been more attentive to him, as I was otherwise engaged.

Cross-examined — Can't tell whether it was the evening of the 14th or 15th.

Joseph B. Pierce — Have resided in Jackson nineteen years; was prison inspector from 1847 for three years. I know Phelps, and his reputation for truth and veracity in the neighborhood where he has lived — as far as I know, it is bad. In the prison, they called his reputation rather bad. Have known him about eleven years. Lived in Leoni when he lived there. Judging from his reputation, I would not believe him under oath.

Cross-examined — The duty of an inspector in prison is to look after matters. The inspectors elect the guards, examine rations, let contracts, receive reports of the conduct of each prisoner once a month, and if a prisoner conducts himself well, nothing is said of him in the report. I made up my opinion of his character for truth and veracity in prison, from what the keepers and Mr. Titus, the agent, said of him. Do n't know that any of them ever told me any thing of his truth and veracity; they told me he sometimes pretended to have fits, and they used to choke him out of them; that is how I made up my mind as to his truth and veracity. This was told me by Mr. Curtis; Capt. Dowell also told me the same thing. This is all I heard of his truth and veracity while in prison, and is one of the reasons why I say I would not believe him under oath. Titus never told me anything about this. Phelps worked in the weavers' shop when he pretended to have fits. He also worked at making farming tools. Save that about fits, I have nothing to base my opinion on as to his truth and veracity in prison.

Do n't recollect having spoken to any one in particular, but have to several in general, about his reputation, in different parts in the city, since I came in. I have, on the walk, with Mr. Titus. Have heard the other witnesses talk of it; did not join in the conversation. This spring, and since the arrests, I have heard Curtis speak of the fits. Saw Phelps at Lansing, and spoke with him there, but neither there nor anywhere else spoke of his aiding me to get to be keeper at the prison. It is eleven years since I knew him at Leoni. Since he left prison, and prior to the arrests, I have never heard anything said of his truth and veracity. I kept a hotel at Leoni, in 1840, and he then was distilling, and I then

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heard his reputation spoken of. Root and Orrendorf both had some trouble with Phelps about business; they were partners, and rented him the distillery. These are the only ones I heard speak of it at Leoni.

I heard Mr. Welling, the sheriff, and Mr. Tisdell speak of it, about the time Phelps was on trial; what Welling said was, that Phelps feigned sickness; Tisdell said about the same, and it is from these things I have mentioned that I swear his reputation is bad for truth and veracity, and I would not believe him under oath.

To Seward — Can't tell exactly what Welling said, but he said it was a sham sickness. Think it was said the sickness was assumed about the time he was going to be sentenced. Can't recollect what Root said, nor can I tell what Orrendorf said. When I speak of his character I predicate my opinion upon what I have stated I heard, and upon his general reputation.

To Van Dyke — What I have mentioned is all I recollect having heard about his reputation. I do n't now recollect that I heard any other person discuss his reputation for truth and veracity.

D. Dunham — Have lived in Highland, Oakland county, for seventeen or eighteen years; am a farmer, and knew Phelps about fourteen years ago, near Rose, in Oakland county. Knew by report that his reputation for truth was not good. Judging from his reputation there, it would depend on circumstances whether I would believe him under oath. If I knew what he said was true, I would believe it; if not, I would, from his repute, place very little reliance on him.

Cross-examined — When I first knew him, fourteen years ago, report said he lived in Rose or Highland. Can't tell if he then held any office. Have no recollection of his being then justice of the peace, or town clerk. I had no difficulty with him; I may have acknowledged a deed for him as justice of the peace, when I was not legally elected, and by which he was near losing a large sum. I have no recollection of any difficulty with him about it, but he may have used some words; do n't recollect that he made any threats to prosecute me. Whatever acknowledgements I took, I supposed I had authority. Have no recollection of any fuss or hard words with Phelps about it. I know Enos Leak; may have told him I would pay all the expenses to straighten the thing, but do n't remember I did, or that I ever talked with Leak about it.

There was a man named Weed, who is dead ——. Think I have heard a number of the farmers, (Rufus Finney for one) speak of Phelps' reputation for truth and veracity. Rufus lives in the town of Highland. It is my impression that Rufus is the one who in 1836 or 1837, bailed the persons arrested for passing bogus. He said Phelps was a hard case. I won't be positive that I heard Rufus speak of Phelps' character for truth and veracity. I do n't at present call to mind any particular person who I heard speak of Phelps' character for truth and veracity. I can't name any one man. Mr. Weed, who is dead, gave him a very bad name, and said he was dishonest; said Phelps had agreed to do so and so, and would not after do as he agreed to do. He said he had a difficulty with Phelps. I heard Weed say more than any other. It was in Highland I heard Weed speak of Phelps, and I think at the schoolhouse, in the daytime; do n't remember if any one else was present; save Weed and Finney, I can't remember any one I heard speak of it, but

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there were a great many who did speak of it. It strikes me I heard him sworn as a witness, but do n't recollect that they tried then to impeach him; have only a faint recollection, and can not tell before whom, or the suit he was sworn in.

Till to-day I have not seen Phelps for eight or ten years.

Mr. W. D. Westcott recalled for cross-examination — I knew Mr. Tull.

Question 1. Did you at his store in Michigan Centre, in September or October last, say to him, that you would have Fitch peeping through the grates?

Mr. Van Dyke — After all the time that has been consumed, and all that has occurred, I wish to inquire if the court will use its discretion to allow witness after witness to be recalled and questioned for the purposes of impeachment, the prosecution will certainly object to such a wide use of the court's discretion.

Mr. Frink — This is only the second case where we have asked this privilege from the court.

Court — The discretion is used not in reference to the number, but the peculiar circumstances of each witness, and as counsel state they forgot something, I will allow the witness to be questioned.

Witness — I never so stated to Tull, or any other person, at any time.

Question 2. Did you, during the same month, state to him in his store, that Fitch was a notorious scoundrel, that he would appear as a friend to your face, and the moment you turned your back he would run a dagger through your heart; and adding that you would see him peeping through the grates yet?

Witness — I never had any such conversation with Mr. Tull, nor did I say to him in substance, or anything that would have that bearing.

I know John Tyler, who lives near the Centre.

Question 3. In the last part of April or first part of May last, did you say to Tyler, near Mr. Well's house, as you returned from a fishing excursion with Tyler and Joshua Wells, "You have been to the Centre a good deal, and you must know something against these fellows," (defendants,) and did Tyler reply he did not know anything against them, and did you then say, "Come out and swear against those fellows, and you will have friends and money, by God! the company will furnish you money always?"

Witness — Had no such conversation; remember the fishing excursion and speaking with him, and will now state what was said. When I first saw Tyler, he asked if I had come after him as a witness — he then said Spaulding had been down there to see what he knew about some springs that were taken out of a rack, and said to have been done by Price. He then said if he went to Detroit, some one would pay his expenses. I said that the law provides for that, and he would get his witness fees and expenses. He then said his clothes were not fit to go to Detroit in, his boots were worn out, and he must have a pair of boots certain. That was about all of the conversation we then had, and neither Joshua Wells or Mr. Wells were present.

I know Jno. W. Wells, of Michigan Centre, the defendant.

Question — Did you, in the month of November last, in a wagon, going from Jackson to the Centre, in company with Welch, say to him

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that there would be a web woven around Fitch, that would draw him to prison?

Witness — I did not; nor did I say so in substance, or mention the word prison to him.

Isaac D. Tull — Now reside in Leoni village; saw Phelps about ten A. M., and noon on the 11th of April last, come into Leoni from the west; his horse ran as he came in. Did not see him leave. He had a one-horse wagon or buggy.

I know Wm. D. Westcott. I resided at Michigan Centre from the first of April to about the middle of December.

Witness here testifies that at the time and place stated in the question put to Westcott, Westcott used to him the words stated in the second question put to Westcott.

Cross-examination deferred for the present.

John Tyler — I reside half a mile south of Michigan Centre. I know Wm. D. Westcott.

Witness here testifies that at the time and place stated in the third question put to Westcott, at the time and place stated, Westcott used the words stated in the question, and that it was a little south of Wells' house.

Cross-examined — Have been about ten years at the Centre. Came from near Auburn, New York. Know Fitch, Filley, Williams, Corwin, and most of the defendants. They are my acquaintances. Mr. Carmer subpœnaed me. Did not know Westcott much till the 16th or 18th of April, when I moved to my present house, from about three-fourths of a mile from there.

Have seen Westcott but twice before I moved. Before then I saw him often. It was April or May, think April, I had the conversation spoken of, with him. Joshua Wells was present where he could hear it. Often spoke to Westcott at the Centre. Can't say anything we said, but to pass the time of day. Also saw him in Jackson; but before this conversation, never had any particular conversation with him. Think before this conversation, I spoke with him at Wells' about the arrest. I said, if guilty, I hoped they would be punished. He said he thought they were guilty. The conversation I first spoke of, was the last of April or the 10th of May. Can't tell how long after I moved. It was in the fore part of the night; it was not in the evening; it was from nine to twelve o'clock, after we came from fishing. I spoke to Wells about it, after he returned from Detroit; also spoke to Mr. Champlin about it; also told it last week to Welch. Came in on Saturday. Welch was at home when I told him. Live on his farm. Save Wells, he was the first I told it to. I never said to any person that these defendants were guilty of burning the depot, but said I thought they were guilty of putting things on the track. Did not say guilty as hell. Can't say if I said so to Wells and Westcott, or to Westcott alone. I may have said they were guilty of putting things on the track, at the time I said I hoped, if guilty, they would be punished.

I talked with Champlin at Gleason's, (defendant's,) last week; Joshua Wells was there. I asked Wells if he recollected what Westcott said, and said he did: I recollected the words Westcott used. Thought a good deal of them, as I did n't want to be offered friends and money in that way.

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Mr. Spaulding saw me at the Centre, and spoke to me about the springs and Price. I spoke to Westcott about the springs, but can't say but I told him I could come and be a witness as to the springs. Told Westcott I had no money and things to come — spoke of boots — said my clothes were bad — Westcott said if I came, I would have a free passage — Westcott spoke to me of coming down as a witness.

About the Westcott conversation, do n't recollect speaking to any but those I have mentioned. Since I came to Detroit, I told it to Higby, and he wrote it down. This was yesterday, at the Railroad Hotel, in a small room off the bar. Saw Mr. Higby in the witness room a few minutes since, but did not speak of the written statement. Last week Mr. Forward wrote it down at my house as I stated it. Have spoken to my wife, and told her of it at the time Forward wrote it down. Have been to the jail once, and saw the defendants there — did not tell them what I came for. This was the only conversation I had with Westcott of any importance. Do n't know who pays me for coming here. Mr. Carnew paid me two dollars and fifty cents when coming here. Have a family; my oldest child is fourteen years. It was at night Forward took down the statement; Champlin was present. Forward is a connection of, and now stays at Filley's. Have often been at Filley's; had told it to Champlin before Forward came there. Thought it my my duty to tell Champlin, the Michigan Centre folks called me a railroad spy; the women whose husbands are here.

I may not give Westcott's words exactly as he used them, but as near as I remember. He said if I knew anything about these men I ought to come out — the conversation began about the springs — he told me I would have a free passage and pay while here — and I objected on account of my clothes. I had not drank any that day — we were standing near the house.

Coming in on the cars on Saturday, Wells said he remembered what Westcott had said.

Isaac D. Tull, *cross-examined* — Resided six or eight months at the Centre; before that at Niles for nearly three years; before going to Niles lived at Battle Creek for a year, and before then at Jackson. Lived in Oneida county, New York, till I was twelve or seventeen. Lived about a year, clerking, in Columbus, Ohio, and in Worthington, Ohio, taught school for four or five months. Do n't remember now any other places where I resided any time.

Had a house burned in Niles, over a year and a half ago. The house was insured, and so was the furniture, in the Washington Mutual. My furniture was burned up in the house, and I got the insurance. Have not since then used any of the furniture on which I received insurance. Left Niles in day time. Never left any place at night. Westcott never appeared as a witness in any case where I was a party. Never was indicted at Niles. Had the charge of delivering prizes in a lottery, and one was given to a person who did n't draw it. Some got mad, and I was taken up for being concerned in a lottery, and bound over in fifty dollars — the lottery was of trinkets, watches, &c. Chipman had a watch in it. Was n't prosecuted for obtaining that watch by false pretences. Never was arrested, save the once about the lottery. Never was complained of, or charged with passing counterfeit. Never told any one I

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would clear Fitch, if I had to swear black as the ace of spades. Do n't know either a Mr. Huntley or Abbott; never said to them or any one, that neither Fitch, Filley, or any of the boys should be hurt, if I could swear strong enough to clear them.

Westcott said what I have mentioned, in my store, in September or October; my wife was present; had a former wife; we were divorced. Can't give the day of the week we had the conversation, or the time of day; do n't remember how he came to say so when the conversation arose; we often spoke of Fitch. Remember once conversing with Westcott about the wood burned there; did not say to him Fitch had been blowing me up for speaking of it, or helping to put out the fire; but I think I told him defendant Burnett had been. Spoke a good deal about the depredations; was on friendly terms with Fitch. Westcott knew I was familiarly acquainted with Fitch: did not say to Westcott, that I would lose Fitch's custom by speaking against depredations, but said I had lost a good deal of custom by speaking against the depredations. The conversation was about the time it was said that Westcott was a spy. Westcott said that Gleason had said he was a spy. When Westcott first came to the Centre, I supposed him and Fitch very intimate, and, up to this time, thought they were getting up the Indian claim together.

The day after the arrest I was at Johnson's: a gentleman came in and said they brought in a lot of bloodhounds from Leoni, and it was a pity they did not get every d—d son of a bitch in the town. I then said he was a d—d son of a bitch to make such a remark. Afterwards, when I was speaking of it warmly with others, the porter interfered, and threatened to split my head open, and I said, sooner than have a fuss, I would leave, and did leave.

To Van Dyke — Have not made it my business to speak of Phelps or Westcott, but have spoken of them. At "Congress Hall," I stepped up to the bar; some one asked me who was on the stand, and Phelps replied, a little girl of Fitch's was, and they were trying to make her perjure herself. I said that was false, and he got up, and grabbed me by the throat, and we were separated. He was n't speaking to me when I said it was false. Did not say to two or three others that they said what was false; had no words with any one else; there was another man who misunderstood me, and who charged me with saying he said what was false, but it was n't to his remark that I made the expression; had only the one fuss with Phelps at Congress Hall. Told Higby what Westcott said. Frink wrote it down last week, and Higby wrote it down to-day in Congress Hall. Came here a week ago last Friday, and have been two or three times to jail to see the defendants.

The morning I saw Phelps at Leoni, he came from the south. Do n't think, on my direct examination, I said Phelps came from the west, but he was going west.

Never had trouble with Westcott; he once bought a note against me, but I expressed no anger about it; did not say I was sorry he bought it. My wife often visited at Fitch's; never took a meal at his house, or he at mine. What Westcott said was, Fitch was a rascal and scoundrel, and that he would be a friend to your face, and when you turned your back would run a dagger to your heart, and he would see him peeping through the grate yet; can't tell what was said before or after these words.

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Mr. White, going west on the cars, asked me to keep a memorandum of what I knew against the defendants. I said I would; did not tell White that Fitch had blowed me up, or was vexed with me, about speaking against the depredations. Higby served the subpœna upon me. Am not much at the barroom, and have been little at the hotel.

When Westcott used the above expression, I coincided with him; do n't recollect what I did say; do n't recollect that I positively said any thing; think there was no particular conversation between us at the time; think it was where he was said to be a spy; can't recollect any more of the conversation, but I do what Westcott said.

To Frink — Think it was on a Monday, but do n't know where he came from.

JULY 21, P. M.

Henry S. Hocum — Am tolerably well acquainted with Fitch's premises at the Centre, and know the fence around them next the railroad. Examined that fence the day after Westcott testified. Found seven pickets broken at the top, five broken down to the top rail. There are five others with tops broken off above the top rail, and by a subsequent examination I found there was one more broken at the top. Saw no evidence of any of them being ever loosened, save one, the tenth west from the corner of the guard, and it appeared to be there six or twelve months. Saw no nails that appeared recently drawn. Examined for the purpose of ascertaining. Knew the fence before then.

Last Christmas day Fitch was at Anson Delemater's; saw him there the day before Christmas. Got there about noon, and found him and his wife and daughter there when I arrived. Stayed there till the day after Christmas, and left there from eleven to noon.

Cross-examined — Am brother to the Hocum who has been sworn; was asked by Fitch, in Detroit, to examine the fence. I intended, when I left here, to examine the fence. Told Fitch I would examine the fence; it was right on my way home, and I stopped to examine; spent about a half an hour examining the fence; it was a pleasant day. Commenced at the east and went to the west, and then examined back; examined every rail — it is whitewashed. Think, save the new picket, there was no nail ever drove since it was whitewashed. The nails had the appearance of being drove and then whitewashed, and the wash settled round it. Think a nail could not be drawn and put back without leaving the traces of having been out, but it possibly might be.

Have been here five or six times during the trial, for the purpose of hearing and seeing what was going on. Am subpœnaed — was here before I was subpœnaed — business merely to hear and see what was going on. Have taken an interest in the defence, and been active in getting witnesses. Have conversed with defendants' counsel. Have talked with Higby; can't tell how often. He was not with me when I first examined the fence; but he has been there with me. Coy, Hurd, and another went there the second time I examined. The first time I examined, Mr. Whiteman and Dr. Moulton were there — made the last examination last week — there then was another one broken, and the

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nail out at the top. Know Fitch, Farnham, Champlin, Filley, Corwin, and the Prices.

Henry S. Francisco — Reside in Grass Lake township, at Franciscoville: have resided in Grass Lake about eighteen years; know the Metcalf premises, lately occupied by Phelps. Was there in March last; I think, also, in the preceding winter. Noticed a hovel on the premises, about fifteen rods or less from the gate. Have measured the distance lately — there has been a removal of a crotch, that was near the hovel in March — from my recollection of where the crotch stood (six or ten feet south of the hovel) do n't think it would obstruct the view of the hovel from the gate.

I first knew Phelps in 1842 — I am acquainted to some extent with his reputation for truth and veracity in that neighborhood — consider it bad. Judging from it, I think I would not give him credit under oath.

Cross-examined by Livermore — Reside about a mile from Phelps' residence. Was at the premises in March. Do n't recollect there seeing any but a post near the hovel, but it may have been covered some time. The post was south of the hovel. Saw the opening in the hovel; do n't think the post would obstruct view of the opening. My impression is, there were no up and down posts at the east end of the hovel. We inquired for Phelps, and he was from home. There may have been a shed where the post was, but my impression is there was then no covering to it. There was a horse tied to it. There may have been posts between the one I speak of and the hovel, but think not.

When I speak of his character, I speak of it all through, before and after he went to prison. Between his coming from prison, and these arrests, I think I have heard his character for truth spoken of at a time when we were threshing at my house. Can't remember what was said; think the conversation referred to his not paying debts he promised to pay; that brought the matter up. And something was said about his not paying the man who was threshing. Myself do n't design to tell a man I will do a thing and not do it, unless it is impossible. Have also heard he was knavish and dishonest. Save at the time of the threshing, do n't know as I ever heard his truth spoken of between leaving prison and these arrests. Had a claim against him; he did not pay, and I think he could, but did not know.

To J. M. Howard — There is a road runs north and south, and there is a cross-road about ten rods south of the gate, that runs about east and west; the hovel is about twelve to twenty feet; the roof slants to the north; the door in the east end; the opening in the south side; the door is about six feet wide; think there was no door hung. The house is south of the hovel about five rods. The gate is east of the house, and has a door on the north and also south side.

To Frink — Have heard Phelps' character for truth frequently spoken of, since the arrests in this case, in my neighborhood.

Moses B. Crowell — Reside in Ingham county since the last of April; before April last lived at Sylvan Centre since the fall of 1847. Knew Phelps, resided about two miles from him; know his reputation for truth and veracity. It is very bad; from it would not credit him under oath.

Cross-examined — Have known Phelps since he came from prison,

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eight or ten years ago I knew him by sight; then lived at Leoni, and lived there eight or ten years. Know some or most of defendants; know Corwin, have not known him much for five or six years; know Fitch and Filley; came in to-day. Fenn subpœnaed me at Sylvan Centre. Came there to see my wife, who was sick. There was a time when I might have trouble with Phelps, but did not stop to quarrel with him. I appeared as counsel in a case between him and Burnett, and I swore off the case, and he accused me of false swearing. Believe he has litigated matter before me; last fall he commenced a suit against Stevenson, but let it go down. Burnett commenced a suit before me three times, and each time Phelps brought it before another justice of the peace, as he wanted me for witness. The first time the other justice of the peace could n't attend to it, the second time they agreed to let it go down, and a third time Phelps swore it before another justice of the peace. Never requested the other justice of peace not to try it, or to be away, so it should be before me. The day I spoke to Phelps, I spoke very hard; said to him I would not quarrel with him, that he was beneath the notice of a gentleman. Between his coming from prison and before the arrests, can't name any time, or place or person, who spoke of Phelps, but it was the general talk of all that his character for truth and veracity was bad; that was the general talk wherever he was spoken of. My memory is bad, and I can't name any person, time or place. Think by recalling circumstances I might name some. Now think Ransom Stevenson said Phelps swore false in a suit where he was concerned. Can't tell when or where he said this.

Wm. H. Dwelley— Resided in Grass Lake in the east part of the town, for four years last fall. Am a farmer; know Phelps; he resides about one or two miles from me; know his general reputation for truth and veracity in the neighborhood where he resides; the people say it is bad; from it I couldn't believe him under oath.

Cross-examined — It is in Grass Lake his reputation is bad. The people in general say his reputation is bad. Have heard Butterfield and Hocum speak of it. Hocum lives about half a mile from me, and so does Mr. Butterfield.

A year ago last fall I heard him speak of it. Butterfield was speaking of Phelps having taken wheat and fed it to his horses, and said he said so many things about it he could n't believe him.

When Hocum spoke, we were talking of the reformation of the man. Hocum said he signed the paper to get him out of prison, and thought he would reform, but he believed he was no better man than before; that was all he said of him, in the time specified. I can't give the name of any other who I have heard speak of his truth.

J. W. Fisher — Resided at Grass Lake for about nine years; have seen Phelps; last winter he resided two and a half miles from me. Know his reputation for truth and veracity in the neighborhood; it is bad; judging from it, would not believe him under oath.

Cross-examined — It is about five years, this summer, since I first saw him; he was then in prison. Mr. James subpœnaed me. Since I have been in town, have had no conversation about this matter with the other witnesses; do n't know Higby. Have heretofore spoken of Phelps; have spoken to Dwelley a week ago about him. Since he came from

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prison, and before these arrests, have heard his truth spoken of by E. Francisco, Dwelley, James, and Butterfield.

Either one or two years ago, Francisco said some things about Phelps, but I do n't recollect what they were; do n't recollect what he said.

Butterfield said he stole some wheat of him. I think Butterfield said he would n't want to believe him under oath. Have heard a good many speak of his truth, but can't name them. Have learned his character from every man who has lived by me.

I heard Anthony Overacker say, four years ago, he would n't want to believe him under oath.

Horace Gage — Resided in Sylvan for about fifteen or sixteen years. Know Phelps; he has lived two or three miles from me lately; his general character for truth and veracity is bad, and, from it, would n't believe him under oath.

Cross-examined—Last October, returned to Sylvan from Leoni; had left Sylvan about two years before; while in Leoni, was six or eight miles from Phelps. Saw him only once since he came from prison. Since he came from prison, and before these arrests, I have heard his reputation for truth spoken of frequently; heard it spoken of by Esqr's Powell and Bell, R. Stevenson, and Dickinson. Did not understand you to limit the time to before the arrests. Do n't recollect that, between his coming from prison and the arrests, I heard any one speak of his truth. Put the question again. Heard R. Stevenson, about a year ago, and soon after he came out in his shop, say he would n't believe him under oath; there were several there, and they were speaking of his reformation. Am satisfied his truth was then spoken of; they were speaking of him generally. If I 'm not mistaken, I heard Godfrey speak of him at his tavern over a year ago. Godfrey said he would n't believe him under oath any way. Know Fenn; he subpœnaed me last Saturday; came in this forenoon. Phelps' truth has been the general talk, since these trials, where I live.

Mr. Frink, counsel for defendants—At this stage of the case, we ask for the discharge of the following defendants, whom we wish to use as witnesses: Hiram Hay, John W. Welch, C. Blackburn, Mills Barbour, N. B. Lemn, and John Palmer.

Mr. Seward — We ask the court to now direct the jury to render a verdict in favor of these defendants, or else at this stage to submit their cause to the jury; and we found the motion on the common law, and cite Roscoe's Criminal Evidence, 113, and Archibald's Criminal Pleading, 143.

It is a case also provided for by statute, and made imperative on the court—Revised Statutes, 702.

There are other defendants whom we deem entitled to a discharge, but to simplify the matter, I have made the motion only in reference to these five.

Van Dyke — Does not wish to dispose of the matter at present; there is no dispute about the law; it involves merely an examination of testimony; the prosecution will to-night look over their minutes, and may possibly withdraw all opposition to the motion.

Mr. Seward — I have no objection that the motion should not be decided till morning, but as the defendants have no other witnesses in

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court at present, I will save time, by stating to the court all the testimony against these defendants, as found on my minutes.

The only evidence against Barbour is, that he came to the Centre with Gleason, and had a private conversation with Fitch.

Against Hay — The only evidence is, that he was at Filley's the night the box was given, and that Faulkner supposed next morning he followed and watched him.

Against Welch — I find nothing.

Against Lemn — The only evidence is, that one witness says he is a lawyer; that Westcott says he acted as lawyer in Barrett's suit, and that Fitch said he would attend to Barrett's suits, and Phelps thinks Lemn heard a portion of his conversation with Filley at the ball alley; and by Westcott, that he said he would pity the company if Corwin was convicted; that he had friends, and the cars might go off at the dry marsh; that he was often at Price's; that Fitch said Lemn told him that when he went up to Dexter at the time it had run off, he put a knife under his sleeve, saying he might want to use it.

Against Palmer nothing but the conversation at his own table, when he spoke of spies, as detailed by Phelps.

The counsel commented briefly upon the portions of the testimony referred to. By agreement, the motion was deferred until the 22d, A. M.

H. R. Andrews sworn.

Question — When you parted with Westcott, did you tell him you parted with him because his character was bad?

Van Dyke objects to the question. Will merely submit to the court if it is not one of those collateral issues, not touching the feelings of the witnesses, or the case on trial, but wholly irrelevant, and in respect to which the answer of the witness is binding and conclusive, and can not be contradicted; and cites Cowen and Hill's notes, page 726.

Even if what Westcott stated was incorrect, no perjury could be assigned on it, for it was entirely immaterial.

Mr. Stuart states the manner in which the questions to Westcott were put. The defendants asked if he had not heard that Andrews learned something against his character — this was objected to, and then the general question was put, if Andrews had assigned any reason for parting with him.

Mr. Seward — This case does not come within the rule read: we seek to show a fact, whether he was discharged for cause, or not; whether the cause was honorable or dishonorable. One of the most material questions in this cause is — are Westcott, Phelps, and Lake, to be believed. Westcott was an accomplice, and it is law that no man can be convicted by the testimony of an uncorroborated accomplice — Archibald's Criminal Evidences, page 157. In the case of a witness thus regarded by the law, every circumstance becomes material, and on this ground we ask to introduce the testimony, and contradict him.

Van Dyke — The question whether Westcott is an accomplice, has not arisen. The question is put with the avowed object of contradicting the witness, and thus impairing his credit. Roscoe, 133, et seq.

Court — Reads the rule as laid down in Greenleaf, and decides that the testimony is inadmissible.

Mr. Seward notes an exception.

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E. Higby — Recollect the examination of Lyster, for a charge of obstructing the railroad cars. Fitch attended, and was sworn as a witness. The examination was held before me, as a justice of the peace. Think Burnett was present at the examination, as counsel for the defendant.

To Seward — I examined the fence round Fitch's. I took hold of each picket at the bottom.

No cross-examination.

John S. Hurd — Mr. Fitch was in attendance, as a witness, before the grand jury, when Cook was complained of for perjury, in connection with the Lester suit.

No cross-examination.

TUESDAY, July 22.

Mr. Seward wishes the court now to dispose of the motion made yesterday, in relation to six of the defendants.

Mr. Van Dyke understands the present motion to be made under the practice at common law, without reference to the statute, and will so treat of it, although he supposed the statute had not substantially changed the old rule. The rule is, that when there is no evidence, or only slight evidence against any of the defendants, the court will direct their discharge; but apprehends that, to avail themselves of this, they must make the motion after the prosecution has closed; and, if they enter on their general defence, the court will not afterward, particularly in a case like the present, embarrass the cause by hearing such motions.

If the court will entertain the motion at this stage of the proceedings, it will only use its discretion (to which alone it is addressed,) in favor of any defendant against whom there is no legitimate evidence. 2 Russell, 543; 14 Johns. 123; Bullersot, p. 285; Gilbert's Evidence, 250.

If there is any evidence against the defendants, even though the court may deem it insufficient for the conviction, the rule does not apply, and the court will not use its discretion — certainly not against any who are found aiding, defending, and encouraging the designs and depredations of the defendants on the railroad, for, on such testimony, it is competent for the jury to find that they formed a part of the band, and were acting, or aiding and abetting in the arson now charged, as accessories before or after the fact.

He concedes that, against Barbour and Blackburn, there is no evidence of importance, but reads from the minutes to show that Hay frequently attended the meetings, and there used threats against the railroad and against spies; spoke of the objects to be accomplished, and that they should have revenge; that he was at Filley's the night the match was given to burn the depot at Niles, and was found the next day watching Faulkner; and insists that one thus identified as an active party, both before and after the burning of the depot, is not, under the rules, entitled to his discharge, and the prosecution has strong grounds to finally claim a verdict against him.

In the case of Lemn, he is a lawyer, and one who cannot be supposed to aid in ignorance; and he, an officer of the law, is found encouraging the depredations, scouting the idea of legal remedies, defending the

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depredations as right, alluding to what might be done at the dry marsh by Corwin's friends, if he was convicted. He is found frequently away from his home and place of business, associating with the defendants, at their meetings, and, by his influence, presence, and expressions, encouraging their acts; volunteering to carry on the sham suits they instituted, for the purpose of drawing off the spies, that depredations might be committed, thus prostituting his learning and profession, and making it subservient to the grossest violations of the rights of property and life. He is all through identified with their designs, and it would be monstrous to withdraw him, on motion, from the condemnation and consideration of a jury, and leave young, unlearned farmers, who may possibly have been misled by his superior intelligence and influence, to alone abide their fate. He also cited the evidence against Welch and Palmer, and contended that there was sufficient evidence against these four, not only to go to the jury, but to fairly entitle the prosecution, at the close of the case, to claim a verdict against them, on the ground that they were part of the band, and committed to the general scheme of depredations, of which the burning was a part.

The rule was originally adopted to prevent the prosecution from including in the indictment important witnesses against whom there was no testimony, and thus deprive the defence of their evidence. Certainly, with all the testimony produced against these four defendants, there can be no accusation of bad faith in including them in the indictment, and therefore the main reason of the rule does not apply; and when the reason falls, the rule falls with it, or rather does not apply.

Mr. Van Dyke read and commented on all the evidence touching the defendants, included in the motion.

Van Arman — The prosecution contend that defendants combined with a common design of committing all kinds of depredations on the railroad; and that, if necessary to effect their objects, the burning of the depot was to be a part of their scheme. Four of the defendants having been clearly identified with the depredations and designs of the other defendants, they become fairly answerable for the entire general scheme. Parties can not join in a combination for a series of illegal acts, and be accountable for a certain limited portion of them; if they enter the combination at all, they are answerable and accountable for all embraced within its design.

The motion must be decided upon the case made by the prosecution, and the court must regard it as true; for it is exclusively for the jury to weigh the defence, and the credibility of witnesses — these are both beyond the province of the court.

Mr Seward states, that he relies not only upon the practice of common law, but also upon the statute of 1846, page 702.

Mr Fraser argues at length that the provisions of the statute do not alter the rule; they merely modify it so far that where, at common law, the court would direct the jury to discharge, under the statute the court will discharge them itself; but it does not enlarge the privileges of the defendants, or entitle them to a discharge in any case where they were not entitled to it at common law. The same testimony that puts them to their defence in one case, does also in the other.

Mr. Seward refers to the proceedings of yesterday, to show that Mr.

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Frink made the motion under the statute, although he (Mr. Seward) stated that in his argument he would rely upon the rules of the common law. He also suggests, that the motion was made at once after the prosecution closed. Although the argument was at that time deferred, the motion was then said to be premature, and now too late; the court will not favor the view that any motion of defendants must be either too early or too late, or deprive the defendants of a right existing at common law, and deemed so sacred as to be confirmed by statute.

In regard to the rule of law, in some books it is laid down "when there is no evidence," in others "slight evidence;" the true rule is found as it now prevails in 1 Greenleaf's Evidence, section 379.

While the rule was "no evidence," if there was none, the court struck the name from the record. When it was varied to "slight evidence," as it was for the jury in all cases to pass on evidence, the practice was changed to directing the jury to at once render a separate verdict. The Revised Statutes go beyond evidence not sufficient, and direct the court to discharge where there is not "sufficient evidence to put the parties on their defence."

If the court is clear that the evidence is not sufficient to put them on their defence, we ask their discharge by the court; if of opinion that there is some, but very slight evidence, which it is proper for a jury to pass on, then we ask, under the common law, that the jury be now directed to render a separate verdict as to the six defendants named in the motion. It is immaterial whether the act is done by the court or jury; but a defendant has a right, when indicted, of which no power can deprive him, to be discharged if there is "no" or "slight evidence" against him, or if it is insufficient to put him on his defence.

We are told there is too much evidence. Well, if so, the prosecution can not be injured by submitting their case to the jury now; it is there, before the jury; they will consider it all, and it is as strong now as it will be again.

But is there so much testimony? The question is, if found guilty under it, would the court sustain the verdict? If not, it is insufficient to put the party on his defence, for he can not be called on to defend against testimony upon which the court would not sustain a verdict.

There can be no verdict in felony, without guilty knowledge; the affirmative of that knowledge must be shown, before the defendant is called on to prove the negative. The felony here is burning the depot; where is the guilty knowledge of this felony shown against any of these six defendants?

Here the counsel refers to the various portions of the testimony referring to each of the six defendants, and contends that it contains nothing to show a guilty knowledge of the felony charged in the indictment; that the fact of some of them attending the so-called meetings, amounts to nothing, as even by the prosecuting testimony the so-called meetings were held in public places, that were open to all; that, in fact, many strangers also attended, or rather were present at them, being called to these public places upon business or pleasure, and it can not be claimed that the presence of defendants showed guilt, while the presence of others did not indicate guilt; and besides, these meetings were not secret. All secret matters, all pretended plots, even by the people's testimony, appear

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to have been done apart, and in private talks; and presence at the meetings merely, does not go far enough to constitute any evidence at all.

He supposes that the statute is imperative — that in the given case the defendant shall be discharged, but leaving it in the discretion of the court whether it will discharge itself, or submit the matter for a separate verdict to a jury.

Mr. Van Dyke, on behalf of the counsel for the prosecution, protests against the implied charge of playing fast and loose — there has been nothing of the kind; the prosecution have conducted the proceeding with calmness, candor, and fairness; they never objected to the motion at any time as being premature — they are not amenable to, and should be exempt from, such insinuations.

Gov. Seward disclaims all intention of intimating anything offensive to the counsel for the prosecution — the remarks alluded to were not meant for them; and were called forth by matters with which counsel have nothing to do, and for which they are not responsible.

The Court — Is of opinion that under the statute, the entire power to discharge is vested in the court; but whether it should be a discharge by the court itself or through the medium of a jury, is of no importance, as in a case where the court would direct a jury to find a verdict under the rule at common law, it would, under the statute, discharge the defendants without the intervention of the jury. It is of opinion that, against Barbour, Blackburn, and Welch, there is not sufficient evidence to put them on their defence, and will therefore discharge them; or, if their counsel prefer that form, will instruct the jury to now find a verdict in their favor.

In regard to Lemn, Hay, and Palmer, the court is of opinion that there is some evidence. It refrains from stating or commenting upon it, as it wishes to avoid the intimation of any opinion as to its strength or weakness, but it is such that the court, under the common law rule, would not, at this stage, direct the jury to find in their favor, or under the statute discharge them itself, and as to them denies the motion.

At the request of Mr. Seward the court instructs the jury to find a verdict in favor of Blackburn, Barbour, and Welch, and a verdict is found accordingly.

Mr. Seward notes an exception—

1st. That the court refused to discharge Lemn, Palmer, and Hay.

2d. That the court refused to now submit *their* case to the jury.

Afternoon Session.

Ams Root — Have resided at Jackson for the last nine or ten years; before going there I resided at Michigan Centre. Know Phelps, have known him ten years; first knew him at at Michigan Centre; know what his reputation for truth and veracity there was; it was bad when I lived at the Centre; it was also bad while he was in prison, and from it I would not believe him under oath. I think his present reputation for truth and veracity is bad.

I remember Mr. Fitch coming to Detroit last winter. I was to meet

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him here, to attend a meeting of the members of the Southern Railroad Company; was not certain there was to be a meeting.

Cross-examined — Can't tell precisely, but think Phelps was in prison; I think from 1841 or 1842, and remained there over four years; think he was there from 1843 to 1847. I had nothing to do with him in prison, but know his reputation from conversation with the officers. I ground my opinion on conversation with persons connected with the prison. Conversed with Mr. Dorrell about it in my store; can't tell the time. I was told by some person, I think by Dorrell, that Phelps wished to see me, and then we talked as to what his reputation had been. He said Phelps proposed to settle with me, and wanted to see me, and I went to see him. I can't give Dorrell's language about his truth and veracity. I am certain I give the substance, when I say that he said it was bad. My opinion is that he told me of some letters he had written concerning property being fixed to secure me and Dorrell; said he thought it was arranged between him and his wife it should not be done. This is what he said of his truth and veracity. Also, Dr. Backus said he was a hard case, and such things.

I also had conversation with the Rev. Mr. Pilcher, while Phelps was in prison, about his truth and veracity. Can't say he said it was good or bad, but we talked of it; that is another instance from which I judge.

Phelps once rented a distillery from us, and we had some difficulty in settling up.

Do n't know where he lived since he left prison; heard he lived twenty-five miles from me, and at Sylvan.

Between his leaving prison and the commencement of this prosecution, heard nothing of his truth and veracity, and do n't know anything of his reputation.

To Frink — Our difficulty with Phelps arose from his giving us a draft on persons in New York, whom we never could find.

To Van Dyke — Do n't know, personally, that the persons on whom it was drawn could not be found, only learned so from my correspondents.

Harry B. Lathrop — Reside in Jackson. Knew Phelps when in prison. Was a contractor, and he then worked for me. Know his reputation in prison for truth and veracity; it was bad; from it would not believe him under oath. Think he worked two years for me. Was absent while he was at work; when I returned in October, he continued to work for me till a year from the May following.

Cross-examined by J. M. Howard — Knew him for about a year and a half while he was in prison; during that time heard the keepers of the prison say his reputation was bad. Titus said he was not to be depended on in anything. Mr. Dixon said repeatedly, that he could not believe him at all, he was the least to be depended on of any man they ever had in prison. The inspectors also cautioned me about him; Mr. Backus was the principal one, first by the agent, (Titus,) and after by the inspectors, particularly Backus. When he was put in my shop, I was cautioned against him, that he was tricky, and not to be depended on.

Know Fitch, Filley, Lemn, Farnham: once knew Williams, have seen others of them. Know Fitch very well. Do n't remember a conversation with Fitch, on the cars, about these troubles.

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My conversation with Titus was in '44, in September or October, in the prison; can't specify now particularly. I do state that Titus said he was n't to be trusted in anything.

While he was in prison, heard Titus speak of his truth and veracity. Can't remember but one conversation on this subject with Titus. Titus, in my presence, ordered him to be put on a loom.

Have known Farnham the longest of any of defendants, but know Fitch the best. I may now be trustee of Mrs. Fitch's property; have not lately said I was, and do n't, but I still am on the record; recollect speaking with Hyde and M. on the cars; rode with him past the Centre; since these arrests, once passed the Centre. Do n't recollect then pointing out Fitch's premises, and saying I was trustee of them, but may have — it would not be strange if I did. Do n't know where Phelps lived, and never heard him spoken of since I left the prison, five years ago, till these arrests; did not even know he was out of prison; am sure he was on a loom while Titus was agent. Do n't know that Backus spoke of his truth and veracity, but I inferred from his conversation, and from my own knowledge, that truth was one thing in which he could not be depended upon. My own knowledge is, that his work was not as well done as he could do it, or as he said it was, and he would insist that it was; that I call lying to me; I show no temper; it is impossible to tell all those trivial things; personally know nothing else of his truth and veracity, all I personally know is of the same light character. I had over forty, part of the time, on my contract. All I know, personally, of his truth and veracity, was in relation to his work.

To Frink — I have not stated all the keepers I heard speak of his truth and veracity. Heard P. B. Ring speak of it. Phelps often found fault with the men, but I can't specify instances. During the sales in bankruptcy, the premises on which Mr. Fitch lived were sold, and I purchased them; he represented to me it was his home, and he would pay for it; he did so, and the title since passed from me; that is the trusteeship I spoke of.

Jake Powell — Reside in northeast part of Grass Lake for twelve years, and about three miles from where Phelps resided; have known him two or three years. Know his reputation for truth and veracity; it is bad; from it would not believe him under oath.

Cross-examined — Have seen Phelps before he went to prison, but did not know him personally; it is two or three years since he came from prison. Know his reputation, by his telling stories to me, and by what others say. Have asked persons their opinion of his truth and veracity; last fall, in November, I asked N. Phelps about it, in Francisco's store; I said to him, I thought he was n't a very likely man, and was n't honest. Did threshing for him, and he has n't paid me yet; he had a note against me and another man. Noah did not, as I know of, mention his truth and veracity, but he said he was n't to be depended upon. There was no store kept at Franciscoville at that time, but it was where the store was — the store was burned up before then.

Heard H. E. Francisco speaking of it last fall, when I was threshing in his barn; he said he was not to be believed; he said he had a note against him, and would like to have his pay; can't remember any more of the conversation.

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Heard Henry James speak of it last fall in the road; he said Phelps was n't to be believed; we were speaking of threshing, and James laughed at me for doing the threshing for Phelps, and said P. said he would n't do it, as he knew he would get no pay for it. Also, last season, heard Eddy Francisco speaking of it; he said he was n't to be believed, that he was n't a man to be believed. Do n't know as I have heard any one else speak of it, prior to these arrests.

Jared Hatch — Resided in Sylvan, Washtenaw county, for the last ten years; know Phelps; have known him seven or eight years ago; lately he has lived three or four miles from me. Know his reputation for truth and veracity; it is bad; from it, would n't believe him under oath.

Cross-examined — Phelps last lived on the Metcalf premises; was in that house once, three or four years ago; have heard his reputation a good deal discussed since the arrests; it has been a general topic since the arrests, and was often before, when there was any thing like law or pettifogging going on. Before the arrests, heard Godfrey speak of it; it was in February or March, at his own house. Ca n't recall the words, but he said he thought he could n't be believed under oath; and he thought he was n't a man of good moral character — we were speaking of a suit that was had before me by Burnett *vs.* Phelps; the conversation was the day the suit adjourned, but we did n't speak of the suit. Do n't remember the words or substance of anything else Godfrey said, or who were present, but some one was; do n't remember how the conversation turned upon Phelps; all I remember is, Godfrey said he would not believe him under oath.

Also Mr. Conklin, who has been sworn, said within a week he would n't believe him under oath; do n't know that I ever heard him speak but once; also heard Godfrey within a week.

Heard Hecocks before the arrest say, at Sylvan, he would n't believe him; do n't remember who was present; we were speaking of the Burnett suit; can't remember any more of the conversation.

William Hancock — Resided at Grass Lake, for the last four years or so, near Francisco. Know Phelps; have lived about one and a quarter miles from him. Know his reputation; it is bad; from it would n't believe him under oath.

Cross-examined — Have resided where I live at present for about two weeks; before that at Gerges, two miles from where I now live; before that at Preston's, near Franciscoville. Remember a pile of railroad wood burning; lived a mile from it; it burned well. Did n't set fire to it, and do n't know who did. Am pretty well acquainted there; reputation there is to be depended on. Never was accused of burning the wood; heard I was suspected of it. Have known Phelps two years; have talked with him at Franciscoville, but not within a few days after the arrest that I know of; saw him and merely passed the time of day. Think at that time there was something said about my being arrested. A man in Waterloo, I was told, sent a letter here about something I said. I did n't ask Phelps to intercede to prevent my arrest for the wood. Do n't recollect if I did or did n't speak to him about the wood. Know J. McDowell; never asked him to go and see Phelps on any subject.

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About two months ago, heard Judge Francisco say he was not to be believed. Phelps was then passing on the cars, and they spoke of his riding back and forth, and they did not know what for, and were speaking of his character. Whiting was there, and was speaking about land he was buying from him, and he lied to him, and recommended the land different from what it was. Whiting did n't say he was on the land, but said he was told it was different; since, he told me he had not been on the land; said, in relation to his examination here, that he was not under oath when he said he was on the land; this was before the prisoners were arrested. I heard Powell, at one time when he was asking Phelps for a threshing bill, say he was a liar and the truth was not in him; from Powell I understood that Phelps wanted to offset his son's note against the bill. Think this was before the arrests.

Isaac Collins, at his house, last fall, said to me that Phelps was a rascal, and he would n't believe him on oath, for he was riding round on the cars, and he believed it was for no good.

This is all I heard of his truth and veracity before the arrests.

Christie Blackburn — Know H. Phelps; saw him last winter at John Palmer's. Only saw him there the one time; saw him at dinner; M. Laycock, J. Palmer, and Penfield were at dinner. Freeland was around.

Do not recollect hearing Palmer ask Phelps if he knew that M. Laycock had become a railroad spy: did not hear Palmer say, as I recollect, that if Laycock came out, he ought to go to state prison, and he would do all he could to get him there, either at the dinner or before it.

Did not hear Penfield accuse Laycock to his face, of being a railroad spy; and did not hear Laycock say that though he had been to Detroit with the railroad folks, he knew enough to take care of himself. Did not hear Penfield say, if you ever do swear against us, you know we will send you to state prison, and I will swear when you got the pistols they were not loaded — you know who got the pistols, and who fired them. Never heard Palmer or Penfield say anything of that kind. I dined with them; heard some of them say M. Laycock was going to Detroit to work, and he got ten shillings a day, and some one else said they thought he got good wages. That is all I heard to my recollection.

Remember when the Gazelle was run off, last fall; was at that time working at Penfield's saw-mill, with Penfield; he has but one saw-mill; no one came after bars while I was there; I went there that evening, at five P. M., and stayed till nine or ten P. M. Penfield went with me.

When I saw Phelps at Palmer's, Penfield and I boarded there.

Remember riding from widow Laycock's on a sleigh to the Centre, with Phelps, Martin and Minor Laycock, and John Ladue. Henry Laycock was not with us. I got on at John Laycock's; all save Martin (who went on to the mill) got off at the school, and went to Filley's. Phelps then said he was going to Fitch's to try and buy his oxen, and went out and was gone a little time. He was gone near half an hour, and returned to Filley's, and he, I, and Minor Laycock went to the mill, from the mill we returned, and I got off at John Laycock's and the rest went on. I did n't see Phelps again that day; it was twelve to one o'clock when we got back to J. Laycock's, and it was about a half mile further to the widow's. I was then boarding at John's, and stayed there all

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that day and night, never went but the once with these persons on a sleigh to the mill; this was in December.

Cross-examined by D. Stuart prosecuting attorney — I left John Laycock's that forenoon between ten and eleven. The children may have ridden part of the way to school with us, I can't tell if they did or not. John Laycock had a girl who went to school that winter; do n't recollect of their going in the sleigh to school with us. We stayed about two hours at the Centre, and about half an hour at the mill. The mill is a mile and a half from John Laycock's. We drove about five miles an hour. We stopped nowhere but at the tavern and the mill; we did not stay over half an hour at the tavern; but were gone from John Laycock's about two hours. I chopped wood after breakfast; was at the door when they came up in the sleigh.

Have seen the prosecuting attorney at the prison; remember his reading to Palmer a statement of what Phelps testified to; do n't remember if Palmer then admitted it was all true. Do not remember Palmer admitting the truth of the conversation about the pistols. Had a better recollection of what had passed at Palmer's than I now have. Never heard anything of the pistols till on the trial. Never recollect to have heard anything said at Palmer's, about Laycock's turning railroad spy.

I told Mr. Stuart there was something said about Laycock's coming to Detroit, but could not recollect what it was.

Mr. Stuart read me the statement, did not then recollect what was said about Laycock's coming to Detroit; but Mr. Stuart wanted me to think it over, and have done so, and now remember better. As near as I can recollect, what Palmer said to Stuart in the jail was, these persons were at his house, and there was some conversation, but couldn't recollect what it was.

To Seward — Am twenty-three years of age; the conversation in the jail was after the arrest; the sheriff called me out to see persons; I was then in custody. When I came out, I found Mr. Stuart, Phelps, and Babcock, one of the guards, by; Phelps asked me if I recollected the conversation about Laycock's being a spy, and Penfield and Palmer saying they would kill him. Mr. Stuart wanted me to try and remember; did not offer to let me go, or say they wanted me for a witness; did not say they wanted me to remember it, for this was before Phelps was sworn. Mr. Stuart did not say I would be discharged if I remembered it, or would be discharged; made me no promises. Mr. Stuart said he would send me a coat, and I after got one brought by the turnkey. Mr. Stuart said he would see me again that night, and said he thought he would be able to let me go home; he came again that night, and let me go home. I went home and returned again to day. I do not know who paid my expenses home, Mrs. Fitch paid my expenses in here. Palmer was also in jail at the time of the conversation. It was after the indictments, and I think before the trial commenced; Palmer has also been at home, but is now in Detroit.

To Mr. Stuart — I stated to Mr. Stuart, I had no coat I could wear, that I was brought in, and they would not let me even put on another coat. Mr. Phelps said if he had a change, he would give me one. I complained of the cold, and Mr. Stuart then said that he had a frock coat he would send me. Stuart never spoke with me a word about these

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matters after he said he would send the coat. I wished to see Mr. Stuart, and often expressed the wish, and it was at my solicitation he saw me. Mr. Stuart never said he wanted me to swear to any thing. I wanted to see Mr. Stuart, to know why I was arrested; he said I was charged with being present at the interview, and read the statement. Never spoke to Mr. Stuart, or he to me, about the matter, after I received the coat.

Mrs. Tull recalled — In September or October last, in my husband's store, Westcott said that Fitch was a scoundrel, that he would appear as a friend to your face, and the moment you turned your back he would run a dagger through your heart, and adding that you would see him peeping through the grates yet.

Cross-examined — Can't tell which month it was in; in the witness room, just before I came on the stand, Mr. Frink asked me if I remembered Westcott using the words I have stated. Frink then stated the words. Mr. Tull did not tell me what he testified to, for he said I would be asked if he told me. Mr. Frink did not tell me what Mr. Tull had sworn. It was last evening Mr. Tull told me what I have stated. Do n't know that any person was present but myself and Tull, when Westcott used the words. Do n't know how long Westcott then stayed in the store, nor what else was said, but think Westcott began by speaking of some one having accused him of being a railroad spy. Can't recollect anything else Westcott said. First told of Westcott having so said to Mr. Daniels, of Leoni: think before to-day, I told it to Mr. Frink, at the hotel; he had then paper and pencil, writing down what others said; do n't know if he did what I said. Spoke to Higby about it, to-day, also to Mrs. Fitch to day, and before, prior to 1st July.

To W. A. Howard — I never wrote down my testimony, or made an affidavit of it.

James E. Secord — Live in Leoni; lived in Leoni village in the month of April last; was then in the employment of William Jackson, a merchant. Somewhere between the 7th and 11th of April, about one and a quarter miles south of Leoni village, saw two persons in a one-horse wagon; was three rods west of the road. It was timbered land, some chopped; was coming towards the road when I saw them; think they had an iron gray horse. The wagon stopped, and one of them got out of the wagon. At this time they had got about three rods past me; the road they were on runs north and south, they came from the south, and were going north; the one who got out took a bundle from the wagon, which was in a red kerchief, put it under his arm and got into the lot, and went west; the field he got into is Esquire Mills'; where he got out it is fifty or sixty rods from a house; the nearest house to them was Dave Beeman's, which lay north of them. John Townsend's was the nearest south of them, and about three fourths of a mile off. Between them and Townsend's, all the way on both sides, save one lot on each side of the road, was woods. Did not know either of the men I so saw.

I could n't tell the shape of the bundle, but thought it long, from the way he put it under his arm. From there, I went to Wm. Jackson's distillery, where I was at work; the distillery is about a quarter of a mile south of the village. I only stayed a few minutes there, and then went on to the village. In the village I first stopped at Jackson's tavern,

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on the east side of the stream — am not sure which road I took then, or whether I went past Coykendall's — there are two roads. Think I saw the same gray horse that day, tied to Coykendall's post. Think there was a lawsuit that day, between Freeland and Joshua Taylor. Heard there was, but do not know; from where the man got out, to Michigan Centre, is three or four miles across the lots. Can not tell what hour I got to the village that day. Went there to dinner — can not say if it was noon.

Cross-examined — Live now at T. Quicks, in Grass Lake; am twenty-three years old. At my present place of residence I have lived about a month; moved there from Leoni village; can not say how long I have lived in Leoni village — have lived there since the last day of June; lived there with my uncle, and worked for Abel Scott, T. Quick, H. Henderson, D. Henderson, Wm. Jackson. I worked by the day for all of these people: at the distillery for Jackson, at farming for the rest. First became acquainted with Bildad Bennett, seven years ago, in Leoni. Never spoke with him about what I was to swear to, but answered him what questions he put to me at T. Quick's, last Sunday; am not married; have brothers and sisters who live out, near Leoni.

Have been acquainted with defendant Williams, for three or four years. He is not my most intimate friend; have not associated with him as with other young men; he has written to me since he has been in prison, and I replied. Can't recollect when this was; might recollect, if I had time. It may be six weeks ago — it was four or five weeks before the 4th of July; certainly four. Got one letter from him, but I wrote him two.

It was about the 11th April I saw the men in the wagon; no one ever suggested to me the 11th. Can't say exactly, but think it was about the 11th. Old Mr. Ladue brought me Williams' letter. Sent both of mine by mail.

Never sent a letter to Mr. Williams. Sent both the letters to Mr. Frink. Sent them to Frink because I heard the sheriff tore up all the letters sent to the prisoners.

I do n't know but I might, on my direct examination, say it was from the 7th to the 11th. Do n't recollect if I did. I have never since been to see if the suit was on the 11th. I never said I saw a box, but a bundle. I do n't now know what it was. It was longish, perhaps eight or twelve inches; it was more than six inches. I was about five rods off when I saw it. He took it out of the wagon and put it under his arm; do n't know if it was a match; do n't know how long or wide it was. I can guess the difference between six and eight inches at eighty feet off. I have thought of it two or three times since. I spoke since to two or three about it. Spoke to Edward Barns about it on a Sunday, four or five Sundays ago; he lives about two and a half miles from Leoni, and is a farmer. He was coming to meeting, and I met him at the edge of the village, when I told him; he lives on the four corners as you go south. May be three or four weeks since I told him. Saw two men; he was speaking of Phelps listening; had not been in the habit of talking with him on the highway, or on confidential matters. Three or four years ago, I once spoke to him on the highway. Can't tell what he said, or all I said to him. Do n't know as I can tell exactly what I told

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him about this matter. Won't be sure, but think I spoke to him about these two men riding. Can't tell exactly what I said to him.

Think I spoke of it before Almond Cozier of Leoni village; Can't tell what time, or about what time. It was since the arrest. Don't know when Phelps was stoned. Think it was before he was stoned.

Think I mentioned this before the last two weeks, but am not certain. Think I spoke of it myself first to Barns,

First told Frink what I would swear, last Sunday. Told Bildad Bennet last Sunday; have known him six or seven years; do n't know that I ever spoke to him before Almont. He said Williams requested him to come to me, that I knew something. Can't say for certain I ever mentioned the matter before Phelps was sworn; never read Phelps' testimony; heard it read in Jackson's store. Did not then speak of what I know; did not hear that part of his testimony. The first time this thing was brought to my mind I can't tell; think it was not within the last four or five days; know it was n't. Can't say what it was that first brought it to my mind. Bennett's inquiries were not the first that brought it to my mind; can't say whether it was the last; of Phelps, or their speaking of Phelps being there with a wagon. Was subpœnaed yesterday; have calculated, for two or three weeks, to swear to this. Calculated the defendants would want me to come and swear to this. Sent word, if they wanted me, they must send for me; do n't know how I came to do so.

The day I saw them was clear; that day, was down after a beetle and wedge; had been working off and on for Jackson for two or three weeks; left for the beetle and wedge about nine or ten; was about three rods from the road when I first saw them. Was going north-east; they with a gray horse and light wagon; never saw the men before to know them. I think it was a horse, as a mare is a horse, and a horse is n't a mare; it had four legs, and was an iron-gray horse, about the common size; it was not of the pony kind; both the men had dark clothes, one a cap, I think, glazed. Can't say if either had on overcoats. It was four or five rods from me, where the man got over the fence; this one had dark colored clothes; can't say if this one had a cap or a hat. Saw him cross Mill's lot, and across the south-west corner of the road; the road that crosses the north and south road crosses a creek. Did not watch him at all; merely saw a man get out. The four corners are about a mile south of Leoni; he got about forty or fifty rods south of them; he got in on the left side facing north; the man and the wagon went on towards Leoni; can't tell the color of the wagon, but think it was painted blue; have never heard Phelps' testimony read as to the distances, and the way he came to Leoni; heard that part about his bringing a box.

All the time I heard the testimony read about a box being carried, can't say if I told what I knew.

I did not know for certain, till I was subpœnaed yesterday, that I would be a witness.

Bennett came to me, and asked if I ever saw such a thing. He asked me if I had seen two men go along there; he said he heard I had. At first he said, he heard I saw two men coming from the south, and I told him as I have told here.

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At the time I saw the man, I thought it was a bundle. I did not find the beetle, or wedge, and went back without them. The distillery is about three-fourths of a mile from where I went to look for the beetle and wedge. Can't say what hour I went for the beetle and wedge from the distillery; do n't recollect who worked in the distillery with me that day. I breakfasted at Jackson's; went to the distillery and worked two or three hours, and then went after the beetle and wedge; looked for it a little, and stayed a little at the distillery, can't tell how long; then went to Jackson's, in the village; when I got there dinner was ready; generally dine about twelve. That forenoon was employed in the distillery. It may have been eleven, or after, when I saw the horse and buggy. Think it was tied to Coykendall's post; have heard since these trials several persons speak of Phelps being there.

Before the last four or five days, thought my testimony might be important; can't tell when I first thought it might be. Did n't think it would be important on this point, but thought it might in some points, as I knew those defendants, and might know something that would be important. On the night of the same day, saw Phelps in Leoni village, and thought that might be important to prove. Do n't know it was Phelps who was there; heard them say it was Phelps. I can't name when I first thought my testimony would be important. I first thought it would be important, because I saw Phelps there till night; and saw him get into a buggy with Myers, and throw down a quarter for drink. I never heard the testimony as to the road; do n't know why I thought that would be important. Think that man (Phelps) is Phelps; can't say if he is the man who went across the field with the bundle. I think the man who had the bundle was as tall as that man, or taller; would know him as well as the bundle, about.

Can't say when I first thought my testimony about Myers, and the payment of the quarter, would be important. It was after the arrests; spoke about this to Cozier and Dimmick.

Did n't then tell them about the men in the wagon, as I did n't think that part would be important. When Bennett spoke to me on Sunday, it did not occur to me that about the men in the wagon would be important; never did before Sunday; do n't know that it ever occurred to me that about the wagon would be important. Bennett asked me about the men in the wagon, but did not about Myers, and it then occurred to me that I would be called to that point. Last evening I told Mr. Frink what I have told here, and he wrote it down. Have met Bennett here, but we have said nothing particular, but may have spoken of this matter; am not sure. Bennett and I came in on the cars together, yesterday; we both stop at Andrews'; think I may have spoken about it since I came in; spoke with Frink just before I came on the stand; he merely said I would be called the next one; did not see or read the paper since Mr. Frink wrote down. Have spoken with Bennett since I came here.

Bennett came to me alone on Sunday; he lives in the neighborhood. Am in the habit of being at Coykendall's for the last year; have boarded there some lately, and have frequently seen Williams there. Have been only once at Filley's.

Court adjourned.

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WEDNESDAY, July 23.

James E. Secord on the stand.

Mr. Seward — States that he wishes to call the attention of the court to the condition of Price and Laycock, two of the defendants, who are sick and unable to attend in court. They are now present, but he deems them evidently in an unfit state to attend the trial.

Mr. Van Arman — States that in relation to these defendants, the prosecution have offered, but the defence refuses to sign the same stipulation as in the cases of defendants who were unwell heretofore, dispensing with their attendance; under the circumstances, he thinks the court should only act on the opinion of a physician.

Court — Undoubtedly, the defendants have a right to be present at the trial; and in case of such sickness as renders their attendance impossible or dangerous to life, to have a continuance; but as the refusal to sign the usual stipulation and the sickness have come together, I will not continue the cause until the defendants have been examined by a physician, who can then inform the court as to the true condition of the parties' health.

The attendance of Dr. Scovel having been procured by the direction of the court, he made an examination of the two defendants in question, and reported to the court, that one of the defendants had diarrhœa, and that he would, if comfortably fixed and kept quiet, be as well in the court as if returned to jail.

By request of Mr. Seward, Dr. Scovel is sworn and examined, and testifies as follows: — I have examined Richard Price, defendant, in a room adjoining the court room. He is sick, his disease is diarrhœa; he says it is of five or six days' standing, and it may have been. I think he is not in a state to be in court, confront witnesses, and advise counsel; to do so would not endanger his life, but would have the effect of making his complaint worse.

To Mr. Van Arman — If he remained still and quiet, I do not think he would be worse than in jail; but as any excitement might injure him, remaining in court might prove prejudicial.

The sheriff states that the defendant is now in the counsel room, on the right hand of the judge, the door of which opens on the court, about twenty-five feet from the jury, twenty feet from the witness stand, and twenty-five feet from the prosecuting counsel, lying near the door of the room inside; he would be in sight of the judge and a portion of the jury.

To Mr. Stuart — If the witness stand and jury were moved to the other side of the court room, which could be done, the defendant in the room would hear all that passed and see the entire jury. The door of that room has always been kept open, and many of the defendants from choice have remained there during the trial.

After some further discussion the court adjourned to the 24th at 8 A. M.

THURSDAY, July 24, A. M.

The sheriff reports that defendants Price and Laycock are still absent on account of sickness; that the doctor saw them this morning, and expressed an opinion that they would be able to attend court to-morrow.

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Mr. Van Dyke states that the prosecution are still willing to sign the usual stipulation, dispensing with these defendants.

Mr. Van Arman — wishes to know how long the defence will occupy with their remaining testimony, when the case is resumed.

Mr. Howard thinks from one to two days — the defence would sign the usual stipulation, were it not that circumstances have arisen which he is not at liberty to state openly.

Mr. Seward, after some remarks as to continuation of the cause, begs to say one word in explanation — he is reported in some of the newspapers, as having stated he would not repel the "insinuation" of counsel on the other side; he did not use that expression, or anything that could be construed as conveying any imputation on counsel.

Court adjourned to 25th, at 8 A. M.

MORNING SESSION — 42D DAY.

JULY 25.

The sheriff states to the court that defendants M. T. Laycock and Richard Price are still prevented by sickness from attending the trial. He presents a stipulation, signed by them in the usual form heretofore used, waiving their right of being present at the trial. At the request of the counsel for the prosecution, he took this stipulation to the said defendants; it was fully explained and read to them, and by them signed voluntarily in his presence. The counsel for the prosecution wished him to take it to the defendants, and, if they signed it, to place it in the hands of defendants' counsel, so that it might be ready at the earliest moment, if defendants' counsel assented to its being filed and acted on.

Mr. Van Dyke — States, that in no event would the prosecution interfere between the defendants and their counsel. He will not now file the stipulation; he will hand it to the counsel for the defendants; and the prosecution will not consent to proceed, file, or act under the stipulation, unless it is filed voluntarily by the counsel for the defendants, with an assent thereto, and a declaration of their willingness to proceed.

Mr. Fraser, (for the prosecution,) concurs in the views expressed by Mr. Van Dyke.

Mr. Frink, having been handed the stipulation, states, that as counsel for the defendants, he assents to it. He will himself file it, and now declares himself ready to proceed with the defence.

Here Mr. Frink filed the stipulation, and soon after left the court room.

Shortly after the stipulation was filed, Messrs. Seward and W. A. Howard entered the court.

Mr. Seward said he understood a stipulation had been filed, that the counsel for defendants disavow the act, and will claim and insist that it is invalid.

Mr. Stuart — It was expressly stated that the counsel on this side would receive the stipulation as the act, and with the assent of defendants' counsel. He believed Mr. Frink, who filed it, is the attorney of record. There seems to be some disagreement among the counsel for defendants.

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Mr. Seward — There is no disagreement among the defendants' counsel now in court. They are all of one opinion — that they can not assent to the stipulation.

Mr. Fraser expressed astonishment at the course pursued. The stipulation was not filed till an hour after the court sat. It was filed by the counsel of defendants, not by the prosecution. It is strange to find counsel coming in and protesting against the free act of their associate after he has left the court room.

Mr. Seward states, as counsel for defendants, he does not feel at liberty to waive a clear legal right, which he deems of importance to his clients, and, therefore, can not assent to the stipulation.

W. A. Howard concurs in the views of Mr. Seward.

Counsel for the prosecution say, that they expressly stated that they would not act under the stipulation unless it was assented to by counsel. Whatever rights they might insist on, they are unwilling to proceed unless the defendants' counsel assent unanimously to the filing of the stipulation, and, as such assent can not be procured, would prefer an adjournment.

The Court adjourned to the 28th, at eight A. M.

MORNING SESSION, 43D DAY.

MONDAY, July 28.

The sheriff reports to the court that one of the defendants, (M. T. Laycock,) is still sick, and unable to attend in court.

Mr. Stuart hopes, in view of the length of time occupied, the great expense and the inconvenience to many of the jurors and the court, the defendants' counsel will sign the usual stipulation, waiving the presence of Laycock.

Mr. Seward states that the defendants' counsel will adhere to their resolution of not waiving any of their rights.

Mr. Stuart, Prosecuting Attorney — In view of the considerations he had stated, and deeming, after consultation with the other counsel for the prosecution, that the stipulation signed by Laycock, on Friday, and filed by Mr. Frink, is valid and sufficient, will proceed with the cause by permission of the court. He does not feel at liberty to assent any longer, under the circumstances, to a continuance of the cause.

Here the stipulation on file is read to the court.

The court desires that the cause may proceed under the stipulation.

Mr. Seward asks that a note be made that Laycock is not present, and that he, (Mr. Seward,) disavows the stipulation, and claims the right of having the defendant Laycock personally present in the court during the trial.

Ira W. Kellogg recalled — Remembers a ball at Coykendall's on the 8th of August; it was held in a bower near the house. Know Eben Price; he was there that evening. I saw him there before the cars passed. When the cars passed I was in the bower, and, at the time, was door-keeper. At the time the cars passed, Eben Price was sitting in the bower, close by me, inside the door. Can not state exactly, but to my best opinion, the cars passed between nine and ten P. M. Can't be positive, but think Price went into the bower about dark, and stayed there till quite late. Two trains passed, one east and the other west,

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and he was in the bower when both passed. Should judge by their usual hours, that about three-quarters of an hour elapsed between each train. There was also a ball there on the 4th of July. Do n't know of any other than the two balls during July and August. I was at the ball on the 4th of July, so was Price part of the time. Have no knowledge of the cars being stoned on either of these occasions, save what I have heard since.

I know where Gayer Cady lives. From Gayer Cady's to the Michigan Centre, by the south road, is four or five miles; taking that road and not going through Leoni, you would come into the Centre on the south side of the railroad. To come in on the north side of the railroad, you would pass through Leoni. There is another road, by crossing Penfield's mill, by which you might get into the Centre from Cady's on the north side without going through Leoni; to take this road, after passing the mill, you would have to turn north again. By this route you would approach within a mile and three-quarters of Leoni, and would pass by Reuben Barns' house, which is about a mile and three-quarters from Leoni. From the saw-mill you would go about half a mile north, then half a mile north-west. The point where you would turn north-west is about two miles from Leoni. You would continue north-west till you crossed the railroad, and then turn about south-west to the Centre. Do n't know if any part of the road described was fenced up; a part of it is a road very little traveled.

Remember when the cars were run off in the village of Leoni, in front of Coykendall's, and a man's leg was broken. It was on election-day, last fall, in the month of November. Never heard of cars running off and a man's leg being broken, but the once. At that time I saw the repairers taking up the rail at the switch; when I saw them they had not replaced the rail. The repairers were there when the cars came, and I saw one of them make a signal to the train — that train was going west — it slackened its speed as it approached that spot. The man whose leg was broken, jumped from the cars, and thus broke his leg. He jumped before he got to the spot where the rail was up. This was in broad daylight.

At this stage of the examination, Mr. Seward states that he holds a written paper, signed by M. T. Laycock, whereby he revokes the stipulation signed by him, and placed on the file on Friday; and now presents it to the court, and places it on file. The revocation being filed, Mr. Van Arman states that, as the revocation has been filed, the prosecution do not feel safe in urging on the trial. The prosecution has done all in its power to proceed with the cause; under present circumstances, the defence have it in their power to delay the trial. It only rests with the prosecution to be ready, (as it will be,) to proceed at any moment when the presence of the defendant can be procured.

The court adjourned to the 29th, at 9 A. M.

JULY 29th, A. M.

The sheriff reports to the court that the defendant Laycock is still unable to attend in court, and that his physician is of opinion he will not be sufficiently recovered to attend before Friday.

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Mr. Van Dyke suggests that the court adjourn from day to day.
Court adjourned to the 30th, at 8 A. M.

45TH DAY.

WEDNESDAY, July 30th, A. M.

The sheriff states to the court that the defendant Laycock is still sick, and unable to attend court, and the trial is continued to the 31st, at 8 A. M.

The court adjourned from day to day, until the 4th August, in consequence of the absence of some of defendants, who continued sick.

MORNING SESSION — 47TH DAY.

MONDAY, August 4th.

A. M. Barbour — Resided at Jackson, in the state prison, till within the last few months. I was guard and assistant keeper. Phelps was sent to prison in September, and I went there in the May following. I knew what his reputation was there among the prisoners — it was bad. I was there when he was pardoned and released.

I have seen the matches that were exhibited in court. The first year I was at the prison, I was one day in the state shop, and a man there named Houghton ——

Mr. Van Dyke objects to the proof, unless the testimony will be brought home to Phelps.

Mr. Frink says he will show a similar match was invented in the prison, while Phelps and Lake were there, and that they knew of it.

Mr. Van Dyke — The testimony is not admissible, unless brought home to Phelps, and, with this understanding, it may be received for the present.

Witness — Houghton showed me a block of wood, with four holes bored lengthwise; it was then called a revolving cannon — these holes were an inch, or an inch and a half, and half-inch holes on the side.

I went to the Centre one evening, in the month of September, with Gleason; I think, before the state fair. On the 22d September, Gleason and I went after a horse to the Centre; it was prior to this we went in the evening. This evening, when we went to Fitch's, we saw no one there but Mrs. Fitch, Mr. Fitch, and Amanda. Subsequently, I saw Westcott and Dixon. As I stepped into the door, I told Fitch that Gleason wanted to see him, and he stepped out to the buggy, where I left Gleason. I went into the house, and they were gone about five minutes. At the end of the five minutes, Gleason and Fitch returned, and came into the house. Gleason did not come into the house with me at first. When Gleason and Fitch returned to the house, they came into the sitting-room. I first saw Westcott and Dixon on the steps of the stoop, and Filley with them, about the time Gleason and Fitch returned. I did not see any one playing cards; we were asked to play a game at euchre, but declined. After Gleason and Fitch came to the house, they did not, to my knowledge, leave the room till Gleason and

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I started for home. I was not there with Gleason on any other Sunday evening during that fall, nor upon any other evening. This evening was about the middle of the week.

From my knowledge of Phelps' character for truth and veracity, I would not believe him under oath.

Cross-examined by Van Dyke — I have been sixteen years in the state. Was connected with the state prison for six years — first, one year under Titus, then one under Ferris, then two years again under Titus, and then two under Goodwin. I have known Fitch ever since I came into the state, knew him familiarly. Saw him from time to time, and kept up my acquaintance while I was in prison. Know Filley and most of the defendants. Have often been down to the Centre on business, perhaps four or five times a year; sometimes stopped with one, and sometimes another. I lived near the Centre — I lived near Fitch a a number of years, and may have worked a day or two for him in harvest, or perhaps shearing, but did not work any considerable time for him or Filley. I went down one Sunday with Gleason, the 22d of September. Had no business that day but to take Gleason down. I left him on the steps at Filleys; I only staid a minute or two, and went to my brother-in-law's. I returned there in the afternoon, and saw Fitch and Filley in the street, and a boy or two, Filley's boy. Do n't know of any one else. In the forenoon I staid only to water my horse, and returned to Jackson with Gleason. Did not see Westcott or Dixon. Was away that day from the Centre four or five hours.

The time I was down in the evening Gleason was with me — we arrived about dark; stopped at Fitch's about fifteen or twenty minutes, and returned with Gleason to Jackson. Do n't recollect if the candles were lighted.

I first went into the sitting-room by the east door; did not then see any one in the porch. Mrs. Fitch and daughter were in the room. I first saw Westcott and Dixon standing on the stoop; there was no table set out, do n't know if there were lights. I saw Filley set out a table in the dining room — saw him through the door. I can't state positively if the table was set out, but think he was setting it out. Westcott and Dixon were then in the room with him. Fitch and Gleason were at this time in the sitting-room with me. We were asked to play; did not, and left at once, leaving Filley, Westcott, Dixon, and Fitch after us. We left early in the evening, but I can't tell at what hour.

When he said he wanted to see Fitch, Gleason was standing by the buggy, fifteen or twenty feet from the house — I was then hitching the horse — he spoke in an ordinary tone.

Filley may have come into the room where I was; I am not positive. I do n't recollect of Westcott or Dixon coming in; do not know if seats were in the dining-room. I, when going, left by the east door. Do not recollect of Fitch asking Filley to come into the sitting-room — he may have come in without my remembering it.

It was the first year I was in the prison I saw the revolving cannon. I went there in May. I can't fix the time I saw it more definitely than the first year. Titus was keeper when I saw it. I do n't know that Phelps ever saw the cannon, or knew anything of it. I do n't know that Houghton tried to get a patent for it — it was he who showed it

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to me. I do n't know who made it, but suppose it was made in prison. Do n't know that he showed it for the purpose of getting a patent — he said he wanted to get a patent. Do not know if it was made there with the consent of Titus. It was about a foot long, there were four holes in it. I can't tell what wood the block was made of; he showed it to me in the state shop. Phelps never worked in that shop to my knowledge. Do not know that he ever was in that shop, or ever saw or knew any thing of it.

I heard Mr. Palmer (a keeper) speak of Phelps' character — he is now in New York. I had several conversations with him about Phelps' truth and veracity — can't say how often. Did hear him speak against his character — he said he was mischievous, lying, and deceitful. We were alone when he said it.

Also heard Delos Fisher, who was foreman in the cooper's shop, speak of it. Fisher was there two years, in the cooper's shop. Phelps did not work under him; he would have no business communication with Phelps, but as foreman might go round from shop to shop. Do n't know he ever spoke with Phelps; he told me Phelps' reputation for truth and veracity was bad. I suppose we were then speaking of him; I suppose we were speaking of his reputation in the prison. I can't tell the time or place of the conversation, how it arose, or who was present. I do n't know that I can mention any one who did not speak of it to me. Titus once spoke to me of his truth and veracity, on the office steps. He said he was a deceitful person, not to be trusted or believed. Titus never spoke to me but the once on the office steps — it was in the evening, shortly after I got there, perhaps a month or so. It was the general supposition there that his reputation was bad. It is my impression that Titus spoke to me subsequently about his truth and veracity — I am confident he did, but I can't tell the time, place, or who was present. I can't name a man I ever heard speak well of him, nor can I mention any other who I heard speak against it. I can mention nothing more than I have told. I was, till lately, one of the defendants in this case, and was in jail with the others. I do n't know that I am defendant in any other indictment here. I understood I was discharged from all the indictments. I read my discharge in the Tribune, and Hay also told me of it.

I have spoken to the defendants, while in jail, of my trips to the Centre; also, may have told my sister and brother-in-law. I may have told Mr. Frink, but do n't recollect. I did tell Higby of it. I heard Westcott's statement. I spoke to Higby about it, while I was a prisoner, and once last week at Andrews'.

The Palmer I have spoken to; may have said he was a hard-working man. He did not say he was reliable, or to be trusted, on the occasion alluded to. I never heard him say he was to be trusted, and was reliable — do n't know that he trusted him, and relied on him, or was kind to him. Palmer, as I remember, only spoke of Phelps the once.

Mr. Frink wishes to ask if Gleason has property at the Centre?

Objected to, as not touched on cross-examination.

Objection sustained.

P. C. Higgins — I am Police Justice of Detroit, and was during April last. There was a complaint made to me, on which a warrant was issued.

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I have the complaint now in court. There was no other complaint made by the same complainant (Phelps) against these defendants. There was no examination of the defendants on the complaint before me.

[Here the original complaint, on which the warrant on which defendants were arrested was issued, was read to the jury.]

Joseph B. Frisby — I reside in Sylvan, Washtenaw county; have resided there fifteen years. Am some acquainted with Phelps; have known him over six years; knew him before he went to prison; for the last year or two he resided within about two miles of me. I know his reputation for truth and veracity; it is generally spoken evil of. If the report be true, I should be loth to believe him under oath.

Cross-examined — Since he came from the state prison, and before the arrests in this case, I can call nothing to my mind that I heard of his reputation; the most of what I have heard has been since the arrests, and it is on that I chiefly base my testimony.

Francis H. Payne — Have resided in Sylvan for about seven years; know Phelps; during the last year or two he resided about two miles and a half from me. I know his general reputation there for truth and veracity. It is bad; from it I would not give him credit under oath.

Cross-examined — I came to Sylvan from the State of New York. It will be seven years next fall since I first saw him. I then saw him at Sylvan Centre. It was soon after he came from prison I first became personally acquainted with him; it was in the summer before last. I can't tell exactly when he came from prison. I heard he had just come from prison. I spoke to him at Sylvan Centre at an election before last fall — it was at the fall election a year from last fall. Since then I served a summons on him and for him. I know he was at the election the fall before last. I do not say he was not then out of the state — I think I spoke to him at that election at Godfrey's house. I often saw him at Sylvan Centre. I think and feel sure that I saw Phelps at Sylvan Centre between October and December, 1849. I think I saw and spoke to him on election day that year.

Between his coming from prison and these arrests, I heard Peter Riggs and Elisha Frisby speak of his character for truth and veracity. I served a summons for Frisby on Phelps, the fore part of last summer; and it was then Frisby spoke of him. He said he was a liar, and would not pay him as he agreed; that he would not believe him any way. He was speaking of his having a note against him, and he would n't pay as he agreed.

I heard Riggs speak of it last winter at Sylvan Centre. I do n't recollect the precise words used, or how the conversation arose.

I also heard George Phelps speak of it. I was telling him of Phelps' having recovered a large sum of the state, and he said it was all nonsense, you could n't believe Phelps anyhow.

In April last, on his own premises, C. Phelps spoke with me of his reputation. He said, in substance, he considered Phelps a liar; he said he did n't consider him any better than before he went to prison. I do not recollect how the conversation commenced about Phelps. I went there on business, some business, I forget what. I believe he was owing me some costs. I had a paper, I think for his brother George, and stopped there on the way. I am sure that Clark Phelps told me on that occasion that Henry Phelps was a liar, and that he could not believe

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him. I do not recollect any thing else he said; he did n't say any thing about the paper for his brother; he said he would pay the debt he owed me in a few days. The conversation was when I called about the debt.

John Baldwin — Reside in Sylvan, and have done so for thirteen years next September, save three years I was absent. After my absence, I returned last May. When Phelps lived in Sylvan, he lived about three miles from me; this was prior to the last three years; then knew his reputation for truth and veracity. It was bad, and from it I would not believe him under oath.

Cross-examined — The three years I was absent I lived in Barry county. From the time I lived near him, over three years ago, until after the arrests, I know nothing of his reputation.

Before he went to prison I heard Mr. Godfrey speak of his truth and veracity — this was six years ago. I recollect talking with Godfrey; I can't tell who commenced the conversation. We both said we would not believe him under oath, because it was proved he took things that did not belong to him. Since these trials I heard Stevenson say he swore false. His taking things that did n't belong to him, is all I know of his truth and veracity at the time I speak of, and it is from that I testify.

Charles Glover — Have resided eleven years in Sylvan. Never saw Phelps but once before coming here; lived within four miles of him. Know his reputation for truth and veracity; it is bad, and from it I would not believe him under oath.

Cross-examined — The once I saw Phelps was last fall, on the road in front of where he lived. I was coming from Grass Lake, and took the road by his house for the purpose of seeing him; wanted to borrow some money of him. Since he came from prison and before the arrests, Noah Phelps said he could not be believed. I had heard there could be no dependence placed on his word, and as he had sent word he had some to lend, I asked Noah, and he said he could n't be believed. He spoke in reference to the money I wanted to borrow.

In November last, Isaac Osgood came to my house to get some money I owed him. I told him I was disappointed in getting the money from Phelps, and he said if I knew Phelps as well as he did, I would know he could not be depended on to give the money. I can't mention any one else who, in this period, I heard speak of his truth and veracity.

To Seward — The amount I intended to get from Phelps was two hundred dollars.

To Van Dyke — He did not refuse the money for the reason that our property was mortgaged. I do n't know whether my brother had mortgaged the property or not before.

To Seward — The reason he gave for not giving the money, was that it had n't come — he said it was to come from the east. My brother told me he said he was employed by the state.

William Sylvan — Have resided in Sylvan for about seven years. Know Phelps by sight — for the last year or two he has resided about three miles from me; know his reputation; it is bad, from it I would n't believe him under oath.

Cross-examined — I have not spoken to any person in particular about what I know of his character for truth and veracity. I came on

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the stand from the witness-room; there was general talk there about his reputation. I presume I spoke of it in the witness-room. I d on't know what testimony has been given this morning nor have I been told of it.

Since he came from prison and before the arrests, during last fall, I heard Joseph Powell speak of his truth and veracity. Early this spring, in the fore part of March, I heard W. Snider speak of it at his house. He said the report was, that Phelps had a job from the railroad to build and grade, but you could not believe or rely on him. In the same period heard E. Frisby say Phelps was such a man he could n't believe him anyhow. The conversation arose about money that Phelps was to let my brother have. Powell is my uncle. I can't mention any one else in the period specified, that I heard speak of his truth and veracity.

Wm. Harsha — Have resided in Detroit about fifteen years. Recollect the burning of the depot last fall. Was at the fire; went there as soon as I could after I heard the alarm. I went to the fire down Larned street. When I got near there, the fire appeared coming out of the scuttle window, on the north side, about six or eight feet from the cupola. There appeared to be no fire in the cupola, but it was full of smoke. The scuttle is north-east of the cupola. When I so saw the fire, I was fifteen or twenty rods from the depot. My residence was about forty rods or so from the depot. I have had an introduction to Mr. Westcott.

Mr. Frink — Will you state if, soon after, and about the time of the arrests, he told you his life had been put up at auction, in a conversation relative to an article in the Tribune, entitled, "A Leaf in the Conspiracy."

The question was objected to, as no foundation was laid.

Objection sustained.

Cross-examined — At the time of the fire, I lived near the corner of Cass and Larned streets. I came down Larned street to Kendrick's foundry. I was asleep, and awakened by the fire-bell at the depot. A number were at the depot when I got there, and people were gathering very fast. The cupola was filled with smoke, as though it would soon burst out. The appearance was such as if it was confined, and would soon burst forth.

John Campbell — Reside in Detroit. Recollect the burning of the depot. I was then foreman of Fire Company No. 4; that company was at the fire. There was one engine there, and about located when company No. 4 got there. The first I saw of the fire, was in passing Third street. I made a momentary halt, looked over the gateway, and saw the fire issuing from a scuttle on the north roof, near the cupola. Can't state if there was then any fire in the cupola; did n't see any. I believe the cupola was in sight from where I looked. No. 8 was the company that was there before me. Did not then observe fire anywhere else. I located our engine on the south side; did not then see any fire on the south side, or in the cupola.

Cross-examined — I was rushing down with my company to the fire, and only took a momentary glance. Can't say if the scuttle the flame came from, was east or west of the cupola; there might be smoke then in the cupola, and I not notice it.

Horace Francisco — Reside at Franciscoville, about one mile from where Phelps lived lately — know his reputation for truth and veracity,

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it is bad; from it I think I could n't believe him under oath. Know the premises he occupied at Metcalf's; know the hovel on said premises; saw it the latter part of winter and in spring; was there about the 20th of March; went with my father about a horse he was buying; there was then nothing to impede a view from the road of the hole in the hovel. The horse was tied to a post on the south side of the hovel.

Cross-examined — Am aged twenty-five years; have resided in Grass Lake town fifteen years or more. Knew Phelps before he went, and since he came from prison. Among defendants, I knew Fitch, Corwin, and Lemn, and others who are not here now. About three years ago I first knew Corwin. Have not brought any witnesses here. Have seen a few witnesses in reference to coming here, at the request of Mr. Higby. Have spoken about Phelps' reputation. Fitch said if I came to Detroit, I would have my fees sometime or other. Last talked with Higby on Friday, at the depot.

Knew Samuel Adams, of Grass Lake; knew Jno. George, till he died; knew Elijah George; do n't know Joshua Wells.

Did you, at Franciscoville, about two weeks after the arrests, say to Samuel Adams, James Butterfield, and Elijah George, or either of them, that if these defendants, or either of them, could not get out on bail, or free from arrest, so as to take care of Phelps, or get him out of the way, you would do it yourself for them?

Witness — I did not, nor any words of the same substance. Did not at that time, or on any other occasion, say I would get him out of the way, or that he would be put out of the way. Did not use any words, in substance or effect, like them, or anything of the kind.

Know Noah Phelps; went to see him last week; saw him last Friday in his barn. Was there last Monday or Tuesday; went to have him come here, as a witness; did n't tell him then that if he did n't come as a witness, he might find his buildings burned, or use any threats to him, but said if he did n't come, they might send for him. Did not say they would send a bench-warrant after him that would cost him a good deal. Did not, the week before last, at Franciscoville, tell Adams I was going to swear Phelps to hell; never told him anything of the kind.

For the last two weeks, with the exception of two or three days, I have been in Detroit, at the Railroad Hotel; have seen and talked with Higby about the trial every day. Have not been any days getting in witnesses; have been part of days; have asked persons to come as witnesses; from six to eight persons; have said to some that Phelps' reputation for truth and veracity was bad; may have said so to six, may have said so to twenty. My attention has not been confined wholly to Phelps. I kept house for the last two months; have worked for my father and brother; have said Phelps ought to be back in prison, and he never ought to have got out.

David Godfrey — Reside in Sharon; have lived there ten years, and about two and a half miles from where Phelps lived last fall. Know his reputation for truth and veracity; it is bad, and judging from it would n't give him credit under oath.

Cross-examined — My father was here to impeach Phelps. Came in to-day. I am aged twenty-four years, and still live with my father. Can't tell when Phelps came last to live in the neighborhood. Saw

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him often last winter. Do n't remember that I saw him since he came from prison, till last winter. Attended the post office and often answered him as to letters. Met him once on the cars, and saw something inside his vest, and asked what it was; he said a knife, and showed it to me; this was since the arrests. Six or seven years ago, my father and Phelps were not on good terms; he and I had no hard feelings that I know of. Do n't know positively that he made his home in Sylvan. Since he came from prison never had any business transactions with him.

On the 15th April, talked with Alvan Burdock about Phelps; he said he did n't think he was an honest man; did n't think there was an honest hair in his head; if there was, he believed he would pull it out. This was in Elkhart, Indiana; the conversation arose by his asking how Phelps was getting on; I said he was constantly riding around, and that the people were suspicious of him. Twelve years ago Burdock lived in that neighborhood, and about eight years ago, or more, he lived in Grass Lake. Often heard my father say he was a dishonest man, and he would n't believe him under oath.

Have often heard him spoken of, but can't name any other persons. Heard Francisco and Tucker say they could n't understand what he was riding on the cars so much for. Have heard Francisco speak of a lawsuit of Burnett's at Sylvan, with which Phelps had something to do. Do n't think of anything else I have heard said about Phelps.

Orin Sheppard — of Franciscoville, have resided there four years. Know Phelps, and his reputation for truth and veracity; it is called bad; from it, do n't think I could believe him under oath.

Cross-examined — To Grass Lake I came from Phelps' farm in Sharon, which I rented from his wife, while he was in prison. Was never charged to my face, with stealing their wheat. Sold wheat to Francisco, which I raised on Phelps' farm; took the place on shares. Her brother was there when we threshed, and took her share, by her order. Did not sell any of the wheat clandestinely. Before going to Sharon, I lived for two or three months at Leoni. Am married; at Leoni, lived in a house belonging to J. W. Kellogg. Kellogg lived in the same house. My wife's sister is on a visit with me now. She was there when I lived on Phelps' place, for over a year. About a year and a half ago, I first saw Phelps to know him. Never had any business with him, nor did I know of his having any with any one.

Since he came from prison, and before the arrests, heard George Phelps say he was a rascal; this was in May last, in Atkinson's shoe shop. He, at the same time, said he believed he would swear his best friend to hell, for a dollar. If I heard any one speak well of him, think I would not remember it. Heard of no rumpus in the neighborhood about the woman who lived with me; never heard anything about it, and do n't think you did. Fanny Demming lived at my house for a time; there was no rumpus about her and me.

August 4th, P. M.

Mr. Seward asks to recall W. D. Westcott, for the purpose of asking him some questions relative to his having made some statements about

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his life having been put up at auction. At the time Westcott was examined, the defence was not able to state time and place, and, on that ground, the questions now desired to be put, were not allowed. Since then, the defence are enabled to give time, place, and person, and desire to put the questions.

Mr. Van Dyke objects to the witness being recalled. 1st. By their questions, it appears that they knew the point on which they wished to contradict him, and after he has been already once recalled for the purpose of impeachment; and the court will not allow him to be so recalled a second time. 2d. The matter proposed to be inquired into, comes under the rule of irrelevant and immaterial matter, as to which the answer of the witness is conclusive, and relative to which he cannot be contradicted. Cites Greenleaf on evidence.

Seward — Although we knew that he had made some such statements, we did not know the person to whom, or the place where they were made, till lately.

Mr. Seward argued at length in favor of recalling the witness, urging the peculiar nature of the case, and the peculiar position of the defendants, as reasons for a liberal use of the discretion of the court, in allowing the witness to be recalled.

The question having been fully argued by Messrs. Seward, Van Dyke, and Van Arman, in reply to the court, Seward says the questions he proposes to put to the witness are the following:

1st. Was you introduced to William Harsha by Mr. Lillybridge?

2d. Was there then a conversation in relation to an article in the Tribune entitled "a leaf in the conspiracy?"

3d. Did Mr. Harsha state to you, that it must have required a great deal of nerve for the man to have gone in among them, knowing they were devising means to take his life?

4th. Did you say, "I am the man; a man might so disguise himself with false whiskers as not to be recognized by his intimate friends?"

Seward, in order to show the materiality of the questions, refers to the opening by Mr. Van Arman, that they would show that Westcott was denounced as a spy, his life threatened, and that he had to fly, &c.

Mr. Fraser argues the question at length. After the lapse of several weeks, courts will seldom use their discretion to allow a re-examination, even as to important matter, much less as to immaterial matter, and particularly after the witness has been three times on the stand. The questions have no connection with any testimony given by Westcott.

At any stage of the cause, in reference to these questions, the defence would be bound by the witness' answer, and having had his answer once, they must accept it, and can not re-examine.

Mr. Seward — When apprised that Westcott was to be a witness, we had the "leaf in the conspiracy" before us, and expected he would testify to the statements there made. He did not, and we were therefore taken by surprise; instead of testifying, as there stated, that he was among them in disguise when his life was struck off at auction, he stated he was under the floor, and heard a plan discussed to stone him.

The court refers to the testimony of Westcott, in respect to the matter involved in the proposed questions. The questions do not point to any

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testimony given by the witness. In order to impeach, the matter must relate to the case, or tend to show feelings, as malice, &c.

These questions do not relate to the case, as it does not refer to anything proven or testified to, and is not, in itself, material in the case. Nor does it tend to show feelings, and therefore the court refuse leave to re-examine the witness.

An exception noted to the ruling.

Alfred Metcalf recalled — Know Phelps' reputation for truth and veracity; it is not good; from it, I could not believe him under oath.

I know the hovel spoken of; I think last spring there was nothing round it to obstruct the view from the road. In the spring, the ground round it was in stubble. There was a shed built on the south side of the hovel, covered with hay or straw, and branches inside it; there was a plank or slab at the end, but it was not boarded up; the plank I speak of, was on the east side, and towards the road. This was the state of the hovel when I went on the premises about the 12th of April. The plank stood nearer the south, than the north side of the shed.

Cross-examined — Have known Phelps seven years. Part of this time he was in state prison. His reputation remained the same when he went to prison; while he was in prison, I heard nothing touching his reputation; may have heard some one say he was guilty of the crime he was committed for.

Since he came out of prison, and prior to these arrests, I can not recollect any particular instances of anything I heard of his truth and veracity.

The shed was ten or fourteen feet from north to south; it was covered over the opening on the south side of the hovel. Did not mean to say, that it would not obstruct a view from the road into the opening; think it would darken and impede the view; think there was only one plank at the end. Do n't think I said to Van Arman that there were planks and rails at the east side, with spaces between them. Am not able to state positively if I did state so or not.

The shed was made by two posts, placed ten or fourteen feet south of the hovel, from which posts extended to the hovel, and cross branches were laid and covered with hay or straw; at the east end there was at least one plank. Can't state if there were more; think some where about it there were bushes standing up. The shed was about ten feet from east to west; can't state if the bushes were up at both sides or one; the height of the posts was about six or seven feet; the opening in the hovel was under the shed.

Wm. K. Coyle — Resided in Detroit since 1836; was some acquainted with the structure of the depot that was burned; did business there; stored goods there. Have seen different articles of property under the stairs that went from the second floor to the cupola, and about the bins, stray boxes, &c. Saw there a bale about three feet long and twenty inches thick, with cotton sticking out of it. Said, at the time, it was dangerous; that it would be a good place for a man to put his pipe down. I thought, at the time, it was a bale of cotton. I also saw trunks broken open there, and the clothes thrown about; they lay about and against the bins; the stair to the cupola was right beside one bin; there was a bin at the end of the stairs, and one beside the stairs; the

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most distant bin was some fifty feet from the stairs. The elevator ran through one of the bins; it ran in sheet iron boxes, on a leather strap, and the iron boxes were boxed up in pine boxes. They used candles about the bins, in tin holders, such as are used in illuminations.

Was about the depot from April to June, 1850, almost every day. After that I was there almost every week, and round to see how things went on. It was a very large elevator; have seen a number of larger, and a number of smaller ones. The engine was next to the outside of the wall; the bins were near the centre of the building, under the slant of the roof. The engine was more east than the middle bins. The plastering had fallen from the lathing in one spot, three or four feet square, in the engine room.

Cross-examined — Am not an engineer. Have never run or made an elevator. It was in April I went to shell corn at the depot, got through in June; was not employed by the company to superintend there. Had some difficulty about some wheat that was there when the depot was burned. I contended that I had sold it to a man three or four days before; he contended it was mine. Have felt and expressed a good deal of bitter feeling against the company; they killed some cattle of mine worth forty dollars, and only paid me thirteen. Can't tell how often I was at the depot after June, 1850. Can't tell how many nights I was there; was there often; can no more tell how many nights than how many stars. Have seen candles carried round half a dozen times; can't tell who carried them. Think last summer, in May or June, I told my son of my having seen the bale of cotton. Do n't know but I have, but can't say, I saw the bale there after June. The other things I have spoken of I have seen there up to September or October; can't say who had superintendence of that floor. Mr. Hicks was checker; also two Stevens slept up there; they were also checkers, and must have seen them there. Do n't know that I said any thing about a pipe or cigar. The bale was outside all the packages. If it was fired it would communicate to the other packages; there was not any thing on the bale. Can't say how many trunks were there; can't say how many trunks I saw clothing out of.

It was in May, '50; saw the plaster broken off the engine room — this spot was not over one hundred feet from the bale. Do n't know but I did, and do n't know but I did not see tin-holders, cut in diamond fashion, such as that shown, and as are used for illuminations — they were stuck in a post; the posts were white oak. I had an impression that was the kind; if not that kind, I can't tell what kind they were. Have also seen glass lamps used up stairs. The elevator made about sixty-five revolutions a minute — have seen machinery that went one thousand revolutions a minute; am sure I saw one trunk with clothing out of it. In the fore part of the season, my business was on the second floor; in the latter part of the season I worked on the first floor, shelling corn. I did n't say I saw men go up with candles to the floor the bins were on.

Alonzo Holmes recalled, and is shown the letter marked "Price boys' warning," which he heretofore testified was in the handwriting of Champlin, and Mr. Frink asks if it is still his impression that it is in the handwriting of Champlin?

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Mr. Van Dyke objects — It is competent for a witness, on his own motion, to correct his testimony, but the opposite side can not recall him to change his testimony, particularly when the witness has had no opportunity of seeing the paper since he testified.

Mr. Seward—It is merely a question whether or not the defendants can call a witness who has been called by the prosecution. It is competent to disprove any fact proved, or sought to be proved, by the prosecution.

The court allows the witness to proceed.

Witness — The W is not in the form generally made by Champlin: also, I have never seen his signature other than Wm. W. Champlin: also, he generally spells his name Cham-*plin*, and the signature to this letter is spelled Cham-*plain*. I have an account in my possession in the handwriting of Mr. Taylor, the witness.

Here Mr. Van Dyke objects to the testimony; we have nothing to do with Mr. Taylor.

Mr. Seward — We seek to prove that this letter is not in the hand of Champlin, but is in the handwriting of Amos Taylor; and for that purpose I first asked if he knows the handwriting of Taylor.

The Court — I will allow the question.

Witness — Saw Taylor once write in a book; think I know his writing, and that it has more marks of his hand than of Champlin's.

Cross-examined — I spoke of this matter with Frink, at the Railroad Hotel. Was brought in to be a witness by defendants. Also spoke with Champlin himself, and he said it was not his handwriting; this was about two weeks ago. May have talked with Higby about it, think I did; at Michigan Centre, learned he did not make his signature in that way, by seeing some of his writing; he also told me, since I was sworn, that he did not spell his name in that way; the old man also showed me his copy book where it is spelled different. Still think the form of the letters are the same as his handwriting, and still it would strike me as his hand. Never saw Taylor write but once; then he wrote a number of names of those who were boarding with me. Do n't say it is Taylor's hand; the W is formed like Taylor's, but the other letters are not.

To Seward — Do n't know if Taylor ever saw the verses that were in court; he was at my place for a week, these verses were in a bureau not locked; they had verses around, but do n't know if they had these verses, or that Taylor ever saw them. Gleason had village property near the Centre; he has now, there; last year he had but two; also a garden and fruit trees in it. There was a fence moved about a year ago near Fitch's.

Milton H. Merrick — I was acting as deputy clerk of the court of Jackson county, at the time an indictment was pending against Lester for obstructing the railroad.

Question—Was there a nolle prosequi entered?

Objected to, and the objection sustained.

Court adjourned.

Forty-Eighth Day.

Morning Session, August 5th, 1851.

Martin Cross of Sylvan has resided there six years, and about three miles from where Phelps lived; is a farmer, and aged thirty-four years;

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knows Phelps, and his reputation for truth and veracity; it is bad; from it could not believe him under oath.

Cross-examined — When I first moved to Sylvan, Phelps was in Jackson; never knew him before I came from Erie, N. Y.; I came to this state in 1844, and first lived a year in Sharon; I got there in 1844; can't say if he had then gone to Jackson. Since he came from prison, I have seen him often; was twice or three times at his house, to sell him a mortgage I had on a house in Sylvan.

I saw him at a suit before Squire Crowell, in Sylvan, over a year ago; I do n't know that I saw him take part in a suit; he had a suit himself with Burnett last fall; it was adjourned once or more; I saw Phelps there; I guess the suit was never tried; I have not known or heard of Phelps being a witness in any suit since he came from prison. I had no particular reason to inquire into his reputation, but while in prison heard a good deal of him, and also since he came out; while in prison heard Conklin say, in Wyman's store, he was a bad man, with whom he wished to have no deal; do n't recollect who was present, and am not certain it was in the store.

I heard Willis Warner in his own house speak of Phelps, and say he was a smart fellow to steal horses, since this suit began and before; once in January last, when I was at his house; I do n't recollect what I was there for, or who was with me; do n't remember who else we talked of; I think the conversation commenced about Clark's horses, which were stolen; and he said Phelps was a smart fellow to hunt up horses when stolen, and people thought if they could get him they would hunt up stolen horses.

I heard Elder Morton, in John Clark's store, say he thought Phelps was a pretty bad man, and not to be believed, from what he heard: the conversation was about these suits. This was about six weeks ago.

Since he came from prison, and before this suit, I heard a tavern-keeper, at Grass Lake, speak of him; this was in January. I know the men by sight who spoke of him, but can't give their names. I can't tell what was said about him.

I heard Mr. V. Baker, in Clark's store, in Sylvan, speak of him; this was in February. Mr. Clark and others were present; it was in the evening; I can't tell what I was there for; the conversation was about Clark's horses; Thomas G. Davis commenced the conversation. He said if he had horses stolen, he would like to get Phelps to hunt them up, and, if he could pay him ten or fifteen dollars, he would be pretty sure to find them. Mr. Botchford also said something, but I do n't remember what.

I can't remember any thing else I heard between his coming from prison and these arrests.

David Beeman — Lives in Leoni, a few rods over half a mile south of the village on the road to Napoleon. I have lived there twelve years.

On the first Friday after town meeting, last April, I saw two men, about forty rods south of my house, coming from Napoleon toward Leoni in a wagon; after they got round the pond hole, one of the men got out of the buggy and took a bundle or something out of the wagon and got over the fence. He got into Josiah Mill's field, on the west side

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of the road, and went in a westerly direction. At this time, I was on my own land, cutting rails and making a fence. This was about eleven o'clock,— at all events, before dinner; the man who remained in the buggy drove on to Leoni. Where he got out was about forty rods over half a mile from Leoni. I did not know the men; would know Phelps if I was near enough to him. It was south of the cross-road the man got out, and very near the cross-road, and the reason I noticed it was because the road would be shorter to go to Michigan Centre than to go across the lots; from where the man got out he would go seventy rods or so in the direction he took, before striking the road to the Centre. The Centre is called four miles from the cross-roads. I saw the man in the buggy pass the cross-road, and go straight into Leoni; I saw the man who got out till he got near to the road to the Centre, which leads by Penfield's saw-mill: it is a good deal used for drawing lumber, &c., but is not a great deal traveled.

[Here the witness is shown a map of the premises testified about, and identifies it as correct.]

Witness — The horse in the buggy was an iron gray.

Cross-examined — I am a farmer; own a farm, and have lived there twelve years. Know most of defendants. Defendant Burnett is married to my niece. Have not seen Burnett lately; saw him one Sunday about three weeks ago, but did not speak to him. I was at Burnett's house two or three weeks ago. I came here yesterday; was subpœnaed on Monday by Cozier. Last Saturday Higby asked me what I had seen, and I told him, and that was the first time I ever told any one what I had seen. I knew before of the trial, but paid little attention to it. I have taken no papers, and have not read the testimony; heard it spoken of some but not much, on Saturday; Higby and Champlin came to my house, and wanted to find out if a man got out of the buggy and went into the field there, and I at once told them I saw him do so, and the day. I had no difficulty in fixing the day, for it was plain as the nose on my face. I was chopping about sixty rods from the road. I did no chopping within twenty rods of the road. Went to chop between six and seven A. M. The place where I was chopping was easterly from the road. Had no team; I sent my son to drive out cattle, and as he delayed longer than I thought he should, I went towards the road to find him, and then saw the men. Did not go any further after my son, but turned. I came to within twenty or thirty rods of the road. Did not find my son or see him, but he returned to me. After I returned, I stood there a few minutes, not over five minutes. From where I was at work I could see to the road. I did not stand as long as it would take to walk back to where I was at work; the land there was cleared and level; my land runs half a mile south of the four corners, and half a mile and thirty or forty rods north of the four corners. My land is cleared about a qnarter of a mile south of the four corners, and about eighty rods back. All my land is on the east side of the road. Where I stood was about forty rods south of the four corners. The men were south-west of me. I had got a few rods from where I started before I saw them — they stopped about twenty rods south of me. There was an old house about seventy rods west of me, in Mills' lot, that is the nearest house to the corners. Where the man went over Mills' lot is clear. I

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had worked in that field every day from town meeting — a black man worked with me; he worked with me on that day; he did n't come towards the road with me. I stood till I saw the man in the buggy pass my stable, and then I turned back. I would never have noticed the man getting out, if it had not been so near the crossing. The man who got out went at a pretty good pace; he was dressed in dark clothes, and had a hat, but no overcoat on. The man who was in the buggy, was driving when I saw them first. The other was a middling tall man. Did not mention the thing to the colored man when I got back, nor to my son. Do n't remember what the man who remained in the buggy had on his head, or the color of his clothes. I was in plain sight of the road.

I know Secord. Did not see him that morning. Where the man got out of the buggy is about twenty-five rods from the nearest woods— the woods come on both sides of the road about equally near; the field he got into runs up to the woods, twenty or thirty rods from where he got out. I worked in that field every day from the town meeting, and the colored man with me; he also worked there with me every day the week after. I was about three weeks working there altogether. Saw others pass, but do n't remember who. The reason I remember that day particularly was, I paid a dollar that day I owed, and I know the Friday I paid it was the same day, and the one after the town meeting. Told my son to remember the day of the week it was paid. Told him to remember the date as well as the fact of paying it. I remember distinctly, it was the day the dollar was paid that I saw the man get out of the buggy. My son did not go for the dollar till the afternoon. I would remember the day apart from the dollar. Town meeting was on the 7th; looked in the almanac to see, but would know it without. It was before I paid the dollar I looked at the almanac. It was to Bunker I paid the dollar. He called on me about it, and was rather crank, and said if I did not pay that week he would sue me.

The man who got out did not get into any woods in my sight. From where he got into the field to the road, there was no house but the old one; but about forty rods on the road to the Centre there is a house. Had my team down that afternoon. I worked till supper; think there was no person visiting at my house that evening. My son drove the team, and he and the colored man were at supper that evening. Saw Jesse Cosier pass twice this day; can't say how often I saw him pass the day before, but he was drawing rails to Leoni for days before and after this; his team was horses; he was drawing rails for Tull, and also for Bildad Bennett. He passed toward Leoni the first time a little before the two men; can't say how long. Saw the man in the buggy pass my hovel. Cosier passed the buggy near my house; I am very sure of this. Cosier was going toward Leoni, and so was Phelps. Cosier passed him, but I do n't know if he kept ahead. Did not say I saw Cosier before I saw the man in the buggy. I now say that Phelps passed me first, and Cosier after. Do not recollect, but I now think Phelps passed me first and Cosier came after him, and passed on. They were both in my sight together. Do n't recollect if I stated no person else was in sight while I saw Phelps and Lake.

Am now positive I saw the two men in the buggy first, and Cosier

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was then behind them. He did not pass them at the time the man got out, but followed on after the one man in the buggy, and passed him. Phelps passed me first, and Cosier in about ten or fifteen minutes after. After the man in the buggy passed my stable I saw no more of him. Think it was after he passed my stable that Cozier passed him on the road. Can't say if Cozier overtook and passed the buggy before it passed my stable. I have not spoken to Cosier, nor has any one told me what he swore to.

The buggy was near the stable when I last saw it. Cosier was about ten minutes after the buggy; when he passed me, the buggy did not go slower than Cosier. Do n't know how it happened that the slower one passed the faster; it do n't often happen, but it did so happen this time.

I watched the man that got out till he got near the road; think I saw Cosier pass the buggy. At the same time, I saw the man in the field, the one in the buggy, and Cozier, while I was standing near the road. Think I saw Cozier pass while so standing near the road; they were all in sight at the same time.

Question — Have you not stated no person was in sight when you saw the two men?

Witness — I have stated as near as I can that the man who got out put towards the old house I mentioned; the old house was down, and the logs scattered round. Could not see the logs from where I was, but I knew where the house had been. After it passed me, I watched the buggy till it passed the corners, which was about forty rods. Watched Cozier till he got up to the stable. Am sure the buggy passed me first, and am sure Cozier passed after it. Cozier was in sight when the man got out of the buggy. Think he was; it is my best recollection that he was. He was coming from the west, and behind the buggy, and south of it; he was a few rods behind the buggy. He had a load of rails. I say still that the wagon and buggy came in contact. The wagon was on the road that runs east and west coming from where Cozier lives. He lives west of the four corners, and was coming down the east and west road. I think Phelps got to the four corners first, and then Cozier followed and passed him; up near to the stable he passed him. Cozier was in sight when the man was crossing the lot, and the man in the lot was between Cozier and me. The old house is about thirty rods from the corner, and the wagon was between the corners and it when I first saw Cozier. Did not see him till after the man got out of the buggy; the man going across the lots walked fast, and got near the old house (seventy rods) before the buggy got to the corners, (thirty or forty rods.) Cozier was nearer the corners than the house, when I saw him. Think the man in the buggy did not stop after he passed, till he got to the corners. He went an ordinary walk, and did not get to the corners till the other got to the old house. Did not say I saw Cozier at the time the man got out of the buggy, did I? Did not see him till he got to the corners. The stable I speak of stood twenty rods from the corners, on the north and south road. Am sure Phelps got to the corners first. Saw Cozier pass again in the afternoon. I was either in the house or in the lot when he passed in the afternoon; can't say which, but remember I saw him. Did not notice any one with

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him; did n't speak to him either time. The second time I saw him, I was nearer to him than the first time, do n't know where I was, but do remember I was not as far off as the first time. Do n't remember going to my house after dinner that day; think I did. Know I did not go to any neighbor's that day. After dinner my son went with a load of rails to Leoni. It might have been two or three in the afternoon when Cozier passed. Do n't think I was at the house when I saw him on the second time; think I was in the field. Do n't remember if any one was in sight when I saw him the second time; do n't know where I was, but know I was nearer to him than the first time.

Know Bildad Bennett; saw him last week in Leoni village, between the store and the old potash. Do n't know what day. Had then no conversation with him; have not spoken with him for a long time; can't say when. Saw him since yesterday morning; had no talk with him. Last saw Burnett four or five weeks ago. My son went off to sea last of March or first of April; do n't remember which. My daughter has been away six years; she came home to stay last January or February, can't say which. Did not see Secord that day. Might have seen him if he passed, if I was noticing. Last saw Secord last Saturday night; he was at my house, and took supper there. This was after I saw Higby. Secord told me he was a witness here, but did not tell me what he swore to, nor did he tell me what he had seen. Higby told me what Secord had seen. Do n't remember that Secord told me anything of what he saw or swore. Was n't sure then I was coming as a witness. Higby told me he would send for me, but I was not sure he would. Did n't know what Secord had sworn to. Higby told me that Secord had been a witness, and what he swore to. He told me so before I told him what I saw. Higby told me Secord had seen him get out and go across the lot. Higby and I went down the road, and I showed him where I saw the man get out. He did not tell or show me, where Secord had said he saw him get out; this was in the forenoon.

When I came home with my team, Secord was at my door. This was the same day I saw Higby; we did not speak of what he swore to. He said they were very critical — that they browbeat him pretty well; that there was one dark-skinned, ugly-looking specimen that was a pretty saucy fellow, for whom a man had better keep his eye skinned, that he was rather a scabby fellow. Secord also said he was pretty well up, and gave the scabby chap as good as he got; and told me to look out for him. I asked him no questions, and that was all he told me of the affair.

I do n't remember if I told Secord that the man had a bundle; think I told him nothing. I may have told Secord I was coming as a witness; I do n't think I did; I do n't know but he asked me if I was coming as a witness, and I told him likely I was. I do n't think I told Secord I was coming as a witness; I told him I did not know but I should; I did not tell him what I saw or knew; I did tell Secord that I was up splitting rails; went to look after my boy; saw the men, and one get out of a buggy and go across the lots with a bundle.

Secord did not tell me he was down after a beetle and log, and saw the men in the buggy, and one get out and go across the lot; nor did he tell what he swore to; I told you I asked Secord no questions, but he told me he was here as a witness. He did not tell me what he swore

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to. I believe Secord told me he saw a man get out of the buggy; I told you he did n't tell me much. I did n't ask him where he saw him get out. I do n't remember whether he told me where or not; he did n't tell me the very spot, but I knew pretty near. He did n't tell me where; he told me it was a gray horse; he told me it was up in that neighborhood, but he did n't tell me the very spot where he saw the man get out; do n't remember that he told me the man had a red handkerchief. He told me that the man had a bundle under his arm, and I told him the man I saw had a bundle. I told you I did n't ask him any questions.

He and I might, and might not, have talked about the place; I do n't want to be humbugged always. I do n't remember if the place where the man was seen, was mentioned between us. Do n't remember if he asked me, or I him, about the place; if I swore Secord said it was south of my house, he did say so. I can't remember if he did say so. If Secord said anything about the way the man went who got out, he said the same as I have said. I can't remember if Secord told the direction the man took who got out.

He told me the man who got out had a dark dress. He did not tell me he had a hat on, nor did I tell him. I believe I told Secord I had seen a man get out of a buggy up there; do n't remember our speaking of the day or time of the day. I have not gone to Tull, from whom I got the dollar, to see what day it was; Secord said the day was after town meeting. He told me the men in the buggy were coming from the south; I do n't remember if I told him which way they were coming from.

Can't tell if we spoke of the place where the man got out; but if there was anything said about the place, it was said to be south of my house, but I do n't recollect that anything was said about the place.

To Mr. Seward — Cozier lives on the east and west road, on the north side of the road, and about a mile and a quarter west of the corners; more west than the old house. The old house is twenty or thirty rods from the corners; I saw Cozier twice that day; when I first saw him, he was between the old house and the corners. I saw Phelps before him; they came together near the old stable, which is north of the corners. There was but one man in the buggy when it passed the corner; it might have been ten minutes before they came together. My son's name is Thomas Burnett; while I was near the road, I did nothing but stand still; did not then find my son, but, soon after, he came to where I was working.

I saw Cozier again in the afternoon; I can read, but can only write my name; Bunker was the man I owed the money to; my son is aged about sixteen years; I never mentioned anything I saw till I told it to Higby, in the forenoon on Saturday. I was subpœnaed by Cozier, son to the one who drew the rails.

I came to this state from New York state. I lived two to three miles south of Ann Arbor, for one year after I came to the state. I never spoke to Burnett, or any of the defendants, about what I knew or saw. I saw Phelps three times; I could pick him out of a hundred; that day I was not near enough to see his face.

To a Juror — It was south of my house the buggy stopped. I

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saw them for about twenty-five rods before the buggy stopped; it stopped before they got opposite me. The man took a bundle out of the side of the wagon. They did not stop long, but did stop and talk for two or three minutes; then one went across the lots, and the other drove on.

To Van Arman — They were coming along in the buggy, and I was going towards the road. I can't say which of us stopped first. When I saw the man get out, I stopped still, and stayed five or ten minutes. I have spoken to my son about it.

Dr. H. Lappin recalled — Has resided in Sylvan for two years. Know Phelps and his reputation for truth and veracity; it is bad. From it I could not credit him under oath.

Cross-examined — I can not tell when I first formed this opinion that I would not believe, but about a year ago, or over. I have known Phelps about two years. I first met him in the road, and he gave me a ride. Did not then know him, but was afterwards informed who the character was I was riding with. I once administered to his family, I think. I think I told the woman not to drink so much, and the child would not be so sleepy. At the time that I rode with Phelps, I went to his father-in-law's. I did not then want him or ask him to go any where with me. I do n't know that I ever said any thing about him, more than that he was a bad man. My opinion has not changed since I found the block. I have heard a great many speak ill of him; recently he has been a great deal talked of. I have heard the witnesses say the lawyers acted rather foolish in cross-examination; did not hear any of them say they were puzzled to recollect names. Chas. Glover, Wm. Glover, Cross Stevenson, Nutting Butts, Calvin Hecocks, Mr. Conklin, Evans, Esq. Crowell, and the whole town are among those I have heard say he was not to be believed before these arrests.

Heard Charles Glover say at Sylvan Centre, within a year past, he (Phelps) was a bad man; that was what Glover said; it was at the time of a lawsuit.

Wm. Glover I heard speak of Phelps, but can't say if it was before or since the arrests in this case.

I lived once in Barry county; left there four years ago. Lived in Johnstown; there for ten years or so. I never was charged in Barry with any criminal offence; never was arrested in my life; Van Arman acted as counsel for me in a slander matter. I won't tell what the matter was; this was some ten years ago. I have not told any one the names of those I could recollect who spoke against Phelps.

AUGUST 5, P. M.

C. H. E. Beeman — Was sixteen years old last October. I live half a mile south of Leoni. In the month of April saw persons in a buggy near my father's house. Was to work in a field back of some wheat, and went up to look after some cattle, and saw two men come along in a one-horse wagon, and one of them got out. They were coming from the south towards Leoni. Their horse was a lightish iron gray color. It was south of my father's house about a quarter of a mile. Saw them south of the Four Corners. When I saw them I was east from them

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about twenty rods, at the wheat. They were coming along the road when I first saw them; after they got out of the woods, one of them took a bundle out of the buggy, think a box, tied up in a red handkerchief. He was a middling tall, slim fellow, with dark clothes; he got into Mill's field, on the west side of the road, and the other man drove on towards Leoni. When I saw them I was walking along west on the wheat. Know Secord. After I saw the men in the buggy, saw Isaac Badgely; then went up to the house and saw Secord. Saw Cozier before I saw the men in the buggy. He had a load of rails going towards Leoni. It was while I was at our house that I saw Secord; was in the door and he passed. Went back that forenoon to where my father was at work. Went back after I had gone to the house. It was about ten o'clock when I saw the men in the buggy; the man who got off the buggy went north west. Thought he was going to Mr. Stevens. Saw him for twenty or thirty rods from where he got out; was sawing rail cuts with my father, and a colored man, named Robert Levant. Saw the man who remained in the buggy until he got within a quarter of a mile of Leoni. Saw him pass Cozier north of our house. Know the town meeting was on the 7th April, and this was on Friday, four days after. On the same day in the afternoon, went with a load of rails to Tull, at Leoni, and a suit between Freeland and Taylor had just got through.

Cross-examined — Came in yesterday; stop at Railroad Hotel. Cozier subpœnaed me on Sunday morning; at the same time he subpœnaed my father and sister. Recollect distinctly, it was on Sunday morning he subpœnaed me; before then I saw Bildad Bennett and Cozier; this was on Wednesday of last week, about five P. M. Was loading wheat at the same place, when they came and called me down to the fence. They did not then speak to my father. The next day, Cozier spoke of my father to me. Uriah Davis was with him, and Hiatt Mills was present. Met Cozier a second time on Thursday, and saw Cozier again on Friday. My father and I were loading wheat, and he had started home, when Bennett and Cozier came and called me to the fence. Bennett asked me if I knew anything of two men coming along, and one getting out and over the fence, and I told him just as I have told here. He said he knew I was at work fencing there at the time, and I must have seen the men come along. Before he asked me any questions, he told me he knew I was at work, and must have seen Phelps and the other man come along in a buggy, and then asked me if I did n't see them. Cozier, Bennett, and I were together at this conversation. After it they passed on south. Have not spoken to Bennett since next day. Saw Cozier on the road from Leoni to our house, and he told me he had found another witness, Mr. Badgely. The first time I spoke to him, I told him I had seen Badgely along there.

This day, Thursday, he did not say anything about my father; on Friday, Cozier told me he had seen my father, and that he had seen them also. Have not spoken to Bennett since Wednesday. Saw Cozier yesterday near the railroad, but he did n't say anything to me. Saw Mr. Higby on Saturday forenoon, and he asked me if I had seen the man getting out of the buggy. When I saw him, I was in a wagon, going for some berries, with girls. Was home to supper on Saturday.

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Secord was at supper then. He said something about the man getting out of the buggy; he said he was down here and sworn; he did not say what he swore to. Told him what I saw. He said it was just the same he saw. He said he saw me at the house. I told him I saw him; described the spot where I saw the man, and he said it was the same. He spoke of being browbeat here. Saw my father since he was on the stand; asked him if they had laid him out; told him if they hurt me, I would cut my head off. He did not tell me what he swore about the conversation at table. Higby told me, going to dinner, what my father had said — that he swore Secord had said he saw the two men. Higby did not tell me any more of what my father had swore. He did not tell what father had said about Secord saying he was browbeat; or that father said he had asked no questions of Secord.

Higby did not tell me what father said about Cozier passing Phelps on the road. No one told what father swore on that point. Did n't know what father swore about that. The day in April I started for Leoni, about three in the afternoon. Went to the field for a load of rails, and went to Leoni with them; did not see Cozier that afternoon. Went to Bunker's, and paid him the dollar; also went to Luce's office where the trial was, and the suit was just over. When I started from home I went into the house to see, and saw it was three in the afternoon. It was after I went down to the field and got rails, I looked at the clock. When I got to Leoni I went to Tull's. Stayed there fifteen minutes or so, then went to Luce's, then back to Tull's and unloaded, and then to the tavern.

When I saw Bennett and Cozier was the first I told of what I saw. Had made up my mind not to tell of it unless I was asked. Never spoke to father of it till after I saw Bennett. Spoke to father about it the same day I spoke to Bennett. After I saw Bennett, at the wheat stack, I spoke to father about it.

The field I was in when I saw the man has fourteen acres of wheat in it, but there is more than fourteen acres clear. Had been working with father and the colored man, and went to the wheat field to see if there were cattle there. We could see the wheat field from where we were, but there is a hill in the wheat field that intercepted the view of a part of the field. Went to the top of this hill, and there saw the men after the man got out. I turned and went towards the house. Was on the top of the hill when the man got out, and about forty or fifty rods from where I started. The buggy stopped right opposite of me in the road. Was about ten rods from the woods on the south; saw no cattle. Did not see the men in the buggy till I got on the top of the hill. Stood there about ten minutes. Where I stood is the highest ground in the field, from there I could see all the field and all round for twenty or thirty rods, save in the woods. At the time I first saw the men, I saw no one else, but in a few minutes Mr. Badgely came along from the south. Badgely had a dark coat. Can't tell what either of the men in the buggy had on their heads. Badgely was going north.

I also turned and went north, but did not go the road; walked ahead of Badgely. Did not stand on the hill till the man who remained in the buggy got to the four corners. Can't tell if he was half way to the corners before I started north. Saw Cozier come out at the corners,

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before I saw the men in the buggy at all. The man who remained in the buggy went faster than I did when I turned north. Saw the man in the buggy passing the house. I was then still in the wheat field, but going towards the house. I went along north in the field about twenty rods from the road. When I got to the house, Phelps was not in sight, but I went out to the wood pile and from there saw Phelps pass Cozier. You can not see a wagon of rails all the way from our house to Leoni. Saw Cozier pass the corners before I saw the buggy at all. Mr. Zeikles was with another load of rails with Cozier, close to Cozier, and he also passed the corners before the buggy. When I stood on the hill I was out of sight of where my father was at work. Think I was. There was a hollow between us. Did not look to try if I could see him: when I saw the buggy it was about fifteen minutes after I left father.

I did not see father on my way to the house, but he came in a few minutes after me; he came to the house before I went back to the field. Badgely passed before father came to the house. Did not see Badgely again that day. Saw him once since, on yesterday morning; he did not tell me what he was going to swear to, but I told him what I saw, and that I saw him. He did not say if he saw me, or father, or Cozier, or Zeikles. I told him I saw Cozier. Zeikles had a sorrel and a gray horse, and a load of rails. After I left father to look after cattle, first again saw him at the house. It was when I heard of the testimony of Phelps, coming in from the south, that I made up my mind I would not tell what I saw. I saw the testimony in the paper at the post office; have heard a great deal about his coming in from the south. Have heard different members of our family speak of it, my sister and others, who have been in there — did not hear father speak of it. Did not tell father what I saw, or he me, till after I saw Bennett. After I had seen Bennett, father said he did not want to be a witness. Almost at once after the arrests, when it was said all the town was to be brought as witnesses, father said he did n't want to be a witness.

Never told what I saw to any one till I told Bennett. Saw Secord the night he got home, and before I saw Bennett. Told him he would have to come back to be cross-examined. Had seen his testimony in the paper before he got back. Did not then tell him what I saw, until the night he took supper at our house. Before I saw Bennett, I did not know I would be subpœnaed. The night I saw Secord, after he got back, I told him I guessed what he swore was true. Did not again see Secord till the evening he took supper at our house. Before Bennett came, no person had inquired of me about it, nor do I know of any one being along to inquire about it before them, but I heard that before them. Jeff. Corwin, and Mr. Higby, were round inquiring about testimony. Have seen Phelps three or four times. Do n't know Lake. Can't say positively it was Phelps who was in the buggy. The buggy was a one-horse wagon; can't say if it had springs, or if either of the men had an overcoat. There is a crossway two rods long, between the woods and where he got out; there is also a pond, but the person got out before the buggy crossed that. The place where the man got out is between the crossway and the pond hole. The crossway is on the edge of the woods. Did not see Badgely at the time the man got out. Am certain he got out between the crossway and the pond hole. Badgely

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had not come in sight when I went along. Stood about ten minutes after the man got out of the buggy. Was going along the wheat field when I saw Badgely first; he was then back of me. When I saw Badgely, the man in the buggy was out of my sight, over the hill near our house. Did not see Badgely till the man in the buggy had got out of my sight; from the road to where my father was at work, is about forty or fifty rods. Did not see my father till I got to the house. Went back to the field that forenoon. My father came to the house to see what I was doing, he so stated. Did not go back to the field till after he came to the house after me. Am positive I never mentioned what I saw till I told it to Bennett, and also that I made up my mind not to tell any one till the persons hunting up witnesses asked me. Expected they would ask, as they were inquiring of almost every one. Saw Cozier, Higby, and Champlin, looking up witnesses.

The day after I saw Bildad Bennett, I went to the same field with my father, and we there, and almost every day since, spoke of it, and we agreed as to the place I showed him where I stood; where I saw the men I did not see a man standing, twenty rods off; a man might be twenty or thirty rods off, and I not see him, if he was north or north-east of me. There were bushes higher than where I stood; they were north, east, and south-east of me, with dry leaves on them; the bushes are still there, but I have sprouted since at the north end. Sprouted them alone. The bushes I sprouted lie there still. Can show them still, and can show where I stood, and where the man got over the fence. Last Friday evening there were two men there, and they seemed to go to the place where the man got over the fence. One was Phelps, and the other Spaulding. They went to the west fence, between the crossway and pond; saw them from the house, and called my sisters and told them there was Phelps, looking at the place. Think they did not go to the fence till they got where the man got over. Think I would see them if they had gone to the fence any other place. One of them seemed to know the place very well, and that one got over the fence. First saw them at the fence, at the place where the man got over: his getting over the fence led me to think he knew all about it. The one who had got over the fence had a linen coat on. Thought at the time he seemed very ready to go to the spot. Saw them when they passed Stevenson's, and next saw them at the spot. Did not see him go over the fence, but saw him in the field.

On April 11th, did not notice if either of the men in the buggy had an overcoat; the one who had got out had gone about thirty rods through the field, where I saw him last. Can not tell how long I was at the house when father came there, but it was about five minutes.

Uri David — Reside near the west side of Grass Lake. Used to know Phelps; know his reputation for truth and veracity; it is very bad; from it would not believe him under oath.

Cross-examined — Was here the first day of the trial; knew Phelps soon after he came from prison. He was said to live in Sylvan, two years ago this summer. I was introduced to him by his wife at meeting, in Grass Lake; that summer I saw him often. Never spoke with him save at meeting. Do not recollect even saying more than, how do ye do, to him. Saw Hale and Smith at Grass Lake depot the same day I saw

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Phelps there. Have often met Phelps there in the road, at different places in the town, but can't specify any one place.

It was while he was in prison I first became acquainted with his reputation. His wife told me he was in prison. Knew his reputation before she told me. From Nat Pease, a guard in the prison, I learned his reputation. Was asking about prisoners, and spoke of Phelps. Pease said he might never come out. He was a man who could n't be believed there or elsewhere. He said he was so ugly and bad there, he ought never get out; this was in my lot. Phelps' wife was a member of the Baptist church, so was I, and therefore I asked Pease about his health, and in substance, Pease said he would lie — was ugly, and never ought to come out. Do n't recollect another instance of any one speaking of him while he was in prison.

Mr. Bornton said to me that he thought he was a bad man, and not to be believed. This was the summer after he got out of prison. Do n't know how the conversation arose about Phelps.

Henry Hale, two years ago this summer, spoke of him; said he thought he was a bad man. Do n't know how we came to speak of Phelps, or who commenced the conversation.

I can't call to mind any other individuals, save Burnett, defendant, whom I have heard speak of Phelps since he came from prison, and prior to these arrests.

J. B. Wheeler of Sylvan — Has lived there thirteen years; known Phelps for eight or nine years. Since he came from prison, lived a mile from him; know his reputation for truth and veracity; from it would not believe him under oath.

Cross-examined — Never had any business transaction with Phelps. Know I have associated with him, but would n't believe him. Have heard his character discussed a good deal for the last two years, more recently than before; heard it discussed before the arrests, by Brown Butterfield for one, last August; also by H. G. Hocum, in July or August, last year. Butterfield said his reputation was bad, you could n't believe him under any circumstances. He was speaking of his having stolen wheat and fed it to his horses; also said he had stolen oats from Hocum.

Hocum said Phelps' reputation for truth and veracity was bad. We were speaking of his general reputation, and his being in state prison; we talked of it so much and often, I do n't remember what else he said; at the same time Hocum spoke of his taking Butterfield's wheat.

Heard Mr. Havens say his reputation for truth was bad. This was last season. He was speaking of Norman Clark's horses, and said he thought he (Phelps) could hunt them up as quick as any other man; he carried the idea that he was in league with those who stole them, and that I thought was against his truth and veracity.

Mr. Sanger also said he was at his place in Indiana, and took a couple of bags of oats away unknown to him.

Mrs. Lilly of Sylvan, some two months since spoke of Phelps. She spoke about the Butterfield wheat, but did not speak of his truth.

Manly Bouchard since the arrest, spoke of his truth, Before I came to Michigan I resided in Canada; left there thirteen years ago on the 30th of October.

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Before the arrests, W. R. Snider spoke of Phelps. About March he said he thought his reputation for truth was bad; he was speaking of a piece of land, that Phelps wanted a friend of his to take, a piece of land which his friend sold. He found out Phelps did n't own, and for that reason Snider said he was n't to be believed. John Mettins, after the arrest, spoke of Phelps.

I heard quite a number speak of him before the arrests, but can't name any more.

I have not conversed with any one about my testimony. D. C. Fenn who found the block, subpœnaed me. I did n't see the block found; it would have been some satisfaction to have seen it found. Fenn said I was wanted in a suit between Phelps and Fitch and the people. He did n't speak to me about Phelps, or ask my opinion of him. Hocum and others asked me about my opinion of Phelps. I have heard persons remark it was important to remember the names of those who spoke of Phelps.

Davis Tucker of Grass Lake, has resided there since April last; for two years before, lived in Sylvan. Knows Phelp's reputation for truth and veracity, it is bad; and from it would not believe him under oath.

Cross-examined — Did not know Phelps before I went to Sylvan; since the arrest there has been a good deal of excitement out there, and his character has been much discussed, and all say they would n't believe him anyhow; before the arrests I heard something said of his truth and veracity, but not so much as since.

Last fall, I heard Brown Butterfield tell about the wheat, and he said he was a bad man and a scoundrel, and he would not believe him anyhow. I heard old Mr. Francisco, last winter, at or near his house, say he never knew of Phelps telling the truth in the world. He was speaking of some money Phelps owed him, and had n't paid him, and gave that as a reason. No person tells what Phelps says, without giving him as the author.

I can't name any one else I heard speaking of his truth and veracity.

Ransford Stevenson — Have resided seventeen years in Sylvan, about two and a half miles from the Metcalf place. Know Phelps' reputation; it is bad; from it would n't believe him under oath.

Cross-examined — Know my name has been mentioned by witnesses on the stand. Have not talked more of Phelps than folks in general about him. Have not talked much of him. What folks say of him when they speak, is bad; may have spoken to fifty about him. Never said anything against him since he came from prison, save as from what I judged from his reputation. I began to express my opinion soon after he came from prison, as others did also. I know nothing bad of him for six months after he came from prison, nor did I hear anything laid to his charge, but heard persons in that time say he was not to be believed. William Godfrey for one, and others. Heard say he was no better than when he went to prison. This opinion began to be expressed six months or a year after he came from prison. Mr. Godfrey and I exchanged opinions; I got my opinion from Godfrey and others. I can't name any other name than Godfrey.

Lewis Powel, of Sharon, lives three or four miles from Phelps' place.

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Know his reputation for truth and veracity; it is bad; from it, would not believe him under oath.

Cross-examined — His reputation has not grown up since the arrests. Knew him before he went to prison. Since he came from prison, and before these arrests, heard Frisby, Fenn, and William Hall, speak of his reputation.

Tushy said, he had been trying to collect a debt from him that he owed before he went to prison, and had n't kept his promises, and he was n't to be depended upon. Mr. Hale said after he came from prison, that he was a bad and dangerous man. He was speaking of some of Phelps' dealings he had with Asa Burdick. Brown Butterfield also spoke of the wheat matter. Cyrus Raymond also spoke of him at different times. Can not tell which of us spoke of him at first. Gathered his reputation partly from Raymond, also from Stevenson, Godfrey, and J. C. Wymans. Can't state what Wymans said, but think he spoke against his reputation for truth and veracity. Must have been within two or six years, can't swear positively which.

John A. Clark — Resided in Sylvan Centre since 25th March. Phelps' reputation is bad: on reputation, would not believe him, and can't say how many spoke of him. Dr. Frisbee, Elliott, Riggs, Godfrey spoke of him. Riggs told about a horse, the offence which took him, Phelps, to state prison.

Howard Overacker. Reside in Sylvan; known Phelps nine years; his reputation is bad; from it I would n't believe him under oath.

Cross-examined — Have seen Phelps often in the last two years; have had no business with him. Before the arrest, heard Mr. Gillett speak of him. He said he had often seen him pass his house before daylight, and he thought it suspicious. In October last, Moses Metcalf, at his house, said he was not a person to be believed. They were speaking of Phelps' going to Oregon. Metcalf said he was speaking of going to different places during the spring, and he believed he was blacklegging, and you could n't tell where he was going by what he said. Can't name any one else I heard speak of him before the arrests.

Ira Powell, of Grass Lake. Lives three miles from Metcalf's place. Know Phelps' reputation; it is bad; from it would n't believe him under oath. Have lived there thirteen years.

Cross-examined — Am a farmer; live with my father, but, at times, work as a carpenter. Lived six months, three years ago, in Jackson; was to work with my cousin, Mr. Osgood. Went to learn his trade, but did not stay.

Before the arrests, I heard prisoners speak of Phelps' reputation — H. E. Francisco, J. Powell, and father; can't recollect any one else.

Court adjourned till the 6th, at eight, A. M.

MORNING SESSION — 49TH DAY.

WEDNESDAY, August 6th.

Hiram Perry — Reside at Sylvan; know Phelps, and his reputation for truth and veracity; it is bad, and from it I would not believe him under oath.

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Cross-examined — Knew Phelps before he went to prison. I have lived in Sylvan fourteen years, save one year I was in Lenawee county. I have had no deal, and little personal acquaintance with Phelps since he left prison.

Since he came from prison, and before the arrests, have heard it said he was rather of a suspicious character.

I was at his house once; did not go to borrow money from him. Since the arrests, I wanted to borrow money from him, but he said he had none then, but would have in a few days.

Rainsford Stevenson said, before he went to prison, he swore false in a case for him.

Godfrey said he would n't believe him under oath. This was a year ago, in his tavern at Sylvan Centre. Do n't recollect anything else said at that time. Stevenson and Drew were there, and Drew, at that time, said he would not believe him as far as he could throw a two-year old bull by the tail.

Can't mention anything else in the period given.

Do n't know that he has been more talked of lately than before. I came on Monday; was subpœnaed by Crowell.

To Seward — I live fourteen or fifteen miles from Michigan Centre. Know none of the defendants save Burnett.

George Powell — Live at Grass Lake, about three miles from the Metcalf place. Know Phelps' reputation; it is bad, and from it I would not credit him under oath. Know some of defendants; live about ten miles from Michigan Centre.

Cross-examined — Have had no trouble with Phelps. My father threshed for him. Phelps held a note against me; it has never been paid. There was no dispute about the note. Phelps would n't pay the threshing till the note was paid. I never paid the note because I was not able. I worked at the threshing machine; did not agree to turn the threshing on the note, nor did father, that I know.

Know Elder Blake; can't say, if before him, I agreed to do the threshing on the note. I suppose Phelps purchased the note from Blake. Phelps asked me, before Blake, if I would thresh, to apply on the note. Did not say I would; do n't remember what I told him.

Since he came from prison and before the arrests, I do n't know who I have n't heard speak of Phelps.

In that time I heard Francisco, in his store, can't tell the ime exactly, speak of Phelps' reputation. Two other Franciscoes were present; it was before his store was burned; he said Phelps was a rascal. Do n't remember how the conversation arose, or anything else he said of him.

In that time I have heard so many speak of him, I can't recollect any of them. I can't recollect any others I heard speak of him.

Levi Andrews — Have lived at Sylvan Centre for seven years. Know Phelps' reputation; it is bad, and from it, I would not believe him under oath.

Cross-examined — Did not know Phelps before he went to prison. Last fall I went to hire money from him. Did n't get it. Never had any other business with him. It was soon after he came from prison, about two years ago, I first learned his reputation. I was speaking with

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Dr. Smead, and said I thought he was a different man, and he said he did n't think there was much alteration in him; he would n't believe him. I had heard he was a different man since he went to prison. Do n't remember who I heard that from. We were speaking of Phelps' cattle.

Peter Riggs, at his place, last fall, threshing, said he would not believe him on oath. He was speaking of the taking of Butterfield's wheat, and Phelps denying that it was wheat, and therefore he said he would n't believe him under oath.

R. Stevenson, last spring, said he would n't believe him under oath; this was in May, last year, and he was also speaking of the Butterfield wheat; it was in the blacksmith's shop they were speaking of him, when I came in. Nothing was spoken of him but in connection with the wheat.

Do n't remember any one else I heard speak against him in the period mentioned.

Think it was Horace Hocum told me that Phelps was a different man since going to prison.

Amos Parker — Live at Sylvan. Know Phelps reputation for truth and veracity; it is bad, and from it, I would not believe him under oath.

Cross-examined — Knew Phelps before he went to prison. Was once at his house last winter. Folks in general did speak ill of him, before he went and when he returned. When he came back, they said he was no better man. Heard P. Riggs, Dr. Smead, and Mr. Metcalf say this, and also a number of others. This is all I heard them say, and it is upon this I form my opinion.

To Frink — I have seen some of the defendants. Live about ten miles from Michigan centre.

Robert Minnis — Live at Sylvan, about two miles and a half from Phelps. Have no intimate acquaintance with him—have seen him. Have lived there six years. Know his reputation; it is bad; from it, I would not believe him under oath. Do n't know defendants.

Cross-examined — I began to hear of his reputation being bad while he was in prison, and at once after he got out. They used to charge him with being a blackleg, and everything bad; but I can not specify persons. When I put up a house for Francisco there was a good deal of talk about him, as he was often getting on and off the cars there, and getting many letters, that it looked suspicious, and they thought he was blacklegging.

I heard Frisby last fall, say he was not to be relied on for truth. It was about the money Frisby was to borrow from Phelps, and to let me have some if he got it.

Mr. Casidy said there were few horses stolen when Phelps was in prison, but when he came out they began to be stolen again. Can't specify any more I heard. Know defendant Burnett well. There was a charge against me before Esq. Hatch. Burnett was my lawyer. It was not for attempt to murder.

To Seward — It terminated in no cause of action.

Aaron Preston — Have lived in Franciscoville fifteen years. Know Phelps' reputation; it is bad, and from it would not believe him under oath.

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Cross-examined — Have been a farmer for the last few years. Kept a tavern once, and sold and kept grog; did so till last April, about a mile from the Metcalf place. Phelps was a few times at my house; do n't know what his business was. There were two or three stud horses kept at my stable; do n't know if his business was to bring his mares to them. Can't say if he has been at my house in two years. For two years before April last I often heard his reputation was bad. Once I met Mr. Burdick; can't state the time, and he said Phelps had falsified himself in a contract with him, about a farm Burdick sold him. By falsified, I mean he did not keep his contract. Burdick then lived at Paw Paw.

I heard Moses Wood and Stephen Whiting speak of him. Whiting said Phelps had told him a lie, and he catched him at it, about a farm he was selling him, and which was not as represented. Whiting said he had seen the farm. Wood spoke of the same matter, and to the same effect. Do n't remember any more that I heard, and my opinion is made up from my best knowledge.

Chester J. Tuttle — Live at Sylvan Centre. Am a saddle and harness maker. Know Phelps, and his reputation for truth and veracity; it is bad, and from it I would not believe him under oath.

I live about ten or twelve miles from Leoni. Do n't know the defendants. I know Burnett some; do n't know that I know the others.

Cross-examined — Never did business with Phelps. First saw him on the evening of the election, last fall, at Sylvan centre, at James Self's tavern. D. Fenn, G. Savage, and a number were there. I had not been drinking more than usual that night. As near as I can come to it, I drank all I wished for. That evening I told him my means were limited; he said he would lend me some money. After he left I told the others of it, and they said if I got the money, it would be over the left. D. Fenn said this. I proposed selling him a mortgage, which he said he would buy if it was good. Before then I heard he had been hunting Clark's horses.

There was a justice's court held in my shop, and I frequently heard he could not be believed. Think he swore off a case there between him and Burnett — I am not certain, only think he did. Esquire Crowell said he could not be believed; it was in my shop during the winter. It was of so common occurrence, I can't tell when and where I heard this said of him.

Heard Peter Riggs say he could n't be believed; he was speaking of the horse he went to prison for. Have specified all I can, that I heard of him.

To Seward — About one hundred dollars was the sum Phelps proposed to let me have; he did n't say where he was to get it.

To Stuart — The mortgage I proposed to sell him was on land I sold; there was an older mortgage than mine on it. Phelps was shrewd enough to ascertain that, and I honest enough to tell him.

Hiram Teft, of Grass Lake — Know Phelps' reputation for truth and veracity is bad; from it would not believe him under oath. Live ten or twelve miles from Centre; know Burnett some. At present am a farmer; was apprenticed to a blacksmith once.

Cross-examined — I once spoke with Phelps to hire one hundred

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dollars from him, a year ago last winter; did not get it, or any at all of it. My father was gone east with cattle; was doing his business, and wanted to hire the money to straighten up some of his affairs; did not borrow any money from him, but sold him a note on a share; did not afterwards borrow any money from him. Was married a year ago last February; it was then I sold him the note. Heard his reputation a good deal spoken of at that time. Heard Francisco say Phelps owed him some, and therefore would n't believe him. Heard young Francisco speak of Phelps at the time he was getting off and on the cars often. It was before a fire at Francisco's I had this talk. Saw Phelps before that fire get off and on the cars. Have seen him get on morning train, in forenoon, and go west before the fire; can't state who else saw him get on. Have seen him get on the cars often since the fire; recollect his getting on distinctly, once before the fire; a short time before; recollect the occasion, because I think at the time he got a letter at Francisco's. Francisco told him there was a letter there for him. The post-office was kept in Francisco's old store. It was a passenger train Phelps got on at that time; he came on foot, I think, to Francisco's; presume, and am positive I saw him go on the cars at the time he got the letter. Francisco said he did n't think he was a man of truth and veracity. Can't recollect any more than that of the conversation.

Can't name any one else I ever heard discuss his character for truth and veracity.

To Seward — When I asked for a loan of Phelps, it was about one hundred dollars I wanted. He said he had the money, but didn't like to dispose of it; he said he owed Francisco; did n't say if he was going to pay Francisco; or when he got the money, or if he expected more. He let me have two or three dollars for the note; the note was a small one, of Jeremiah Smith.

To Stuart — Am positive the Smith note was not for ten dollars; think it was about seven dollars; can't say if it was a little over or a little under seven dollars; it was a good note, and I suppose has been paid; did not borrow three dollars from him the night before I was married; he has never asked me for that money. At the time I wanted the loan, Phelps did not tell me I could n't execute security on my father's property; at the time had no authority to execute such security.

Albert Question, of Franciscoville — Have lived there since last winter; moved there from a few miles south of it; know Phelps' reputation for truth and veracity is bad; from it would n't believe him under oath.

Cross-examined — I worked for Metcalf last summer; heard Judge and E. Francisco, and Noah Phelps discuss his reputation for truth.

Noah Phelps, last winter, speaking of a job that Phelps said he had for grading, said he could n't be believed. Phelps said they were going to build a depot there, and Noah said you could n't place dependence on his word, and he did n't know if they were going to build a depot.

Last spring, at Francisco's, Mr. Powell said he could n't believe him. Phelps was at the time often getting off and on the cars, and it caused a good deal of talk about him. Do n't remember any one else I heard speak of his truth and veracity.

J. H. Butterfield, of Grass Lake — Am a joiner by trade; know Phelps; and his reputation; it is bad; from it would not believe him under oath.

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Do n't know any of defendants but Myers and Burnett, and live six miles from Leoni, and fourteen from Jackson. Have lived in Grass Lake since 1849, save the last two years.

Cross-examined — For the last two years have been in Livingston county, but have often been at Grass Lake, and generally inquired for Phelps. Heard of him from my brother Brown, in December, 1849; he told me he stole his wheat to feed his horse, and he was a good-for-nothing scoundrel. Never heard any one else, in the two years, speak of his reputation for truth and veracity.

Moses Wood, of Grass Lake — Am a farmer. Know Phelps, and the Metcalf premises — live over a mile from it. Know Phelps' reputation; it is bad; from it would not credit him under oath. Know defendant Burnett, but none of the other defendants. Live six or eight miles from Leoni.

Cross-examined — Went with Whiting to look at a farm of Phelps', in Oakland county. Whiting said to me, that Phelps lied to him about the land; he said if the people told him right, it did not answer the description; neither Whiting or I went out to the land. Do n't know if I said I was on the land. May have said so; it is possible I may have said I was on the land, when I was not. In Oakland we stopped at a tavern in Rose Corners. Do n't recollect that we told Chase there we would go back and say we were on the land. Can't say if we went within six miles of the land.

Have heard Judge Francisco and Noah Phelps speak of him. Noah, after he came out of prison, said he was not to be believed on any spot. Can not say how soon after he came from prison; it was on the territorial road. Do n't know what I went there for, or if any one was with me, or if I was walking or riding, or how the conversation arose. Heard Noah say so often. I never turned my mother out of doors. She never, to my knowledge, took refuge at Noah Phelps'.

Also heard E. Francisco, and most all the neighbors speak of him.

Heard Elder Blake speak of him, at Franciscoville. Can not tell when, or who was present, or how he came to speak of Phelps, or what he said. He said he thought Phelps never ought to get out of prison. Can't recollect any one else I heard speak of him. Do not recollect telling Mr. Prescott I was on the land.

Michael Overacker, of Sharon — Have known Phelps eight or nine years. Am a farmer, and still reside where I did then. Know his reputation for truth and veracity; it is bad: from it, would n't believe him under oath. Only know one of defendants — Burnett. Live sixteen miles from Jackson, and twenty-two from Michigan Centre. In Sharon, Phelps lived within a mile of me for two years.

Cross-examined — About two years ago, Phelps came from prison; since then, and before the arrests, have heard H. Dixon, C. and S. Raymond, and Judge Francisco speak of his truth.

A year ago last summer, Dixon, at his own house, said Phelps was a perfect rascal, and he would n't want to believe him. He was speaking of Phelps coming out of prison. Can't remember any more of the conversation.

C. Raymond, at his house, and when Dixon was present, said the same. They also said it apart.

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Samuel Raymond spoke of him at C. Raymond's, and Cyrus was present. Can't tell how the conversation commenced, but each time they said he was a perfect rascal; each of them said he was a perfect rascal, and that is all I remember of their conversation.

Moses Metcalf said he believed he was getting into some deviltry, as he was getting off and on cars. This was about last harvest. Alfred Metcalf was present. What I have repeated, is what they said of his truth and veracity. We were drawing in wheat at the time, and we spoke of his going to Oakland. Something was also said of his getting a hired girl; have heard a good many speaking of him, but can't name any other. Heard B. Butterfield speak of the wheat; never heard one speak well of him. Can't name any other I heard speak of his reputation for truth and veracity. Have heard some of the witnesses say they bothered them some to remember the names of persons, and I do n't know but I tried to recollect names.

Hiram Fisk, of Sharon, a farmer and shoemaker — Know Phelps over two years. His reputation for truth and veracity is bad there; from it, would n't believe him under oath.

Cross-examined — Have heard a number say they would not believe him. Geo. Phelps and I are good friends. Never heard him speak of Phelps till after this suit; before it, heard some of the Chapmans and Powell speak of him.

Chapman said he believed he was off stealing horses, or hunting them up for some one else to steal. He was speaking of Clark's horses; before that, he said he believed he was no better than before he went to prison. Phelps never lived in Sharon after I came there; I came from New York.

Powell said he did n't think he was any better than before. Powell did n't, but Chapman did, say he would n't believe him. Can't recollect any other person I heard speak of him.

Orin Thatcher, a farmer, lives at Sylvan — Know Phelps; lived three or four miles from him; know his reputation for truth and veracity; it is bad; from it would not give him credit under oath. Know part of defendants: Williams, Filley, Fitch, Lemn, and Burnett. Live about sixteen miles from Jackson, and eleven from Michigan Centre.

Cross-examined — Have not been in the habit of going to the Centre. Have been to Leoni. Never played cards with any of defendants. Have been there to shooting matches, ten dollars has been the highest stake. Moved from Sharon to Sylvan a year ago. Came from New York state two years ago. Came from Wayne county, New York. Fisk and I married sisters, so they say, but do n't know it but by repute; only know they are sisters by being told it. If their father and mother were honest, I suppose they are sisters.

Before the arrests, heard S. Chapman speak of Phelps — can't tell where; he said he was the smartest of the Phelps, but he was a d—d rascal. Do n't know how we came to speak of him. He was telling he stole this and that; he did n't say who owned this or that; that this and that were horses and oxen. He was speaking of the offence for which he went to prison. Do not know that I ever heard any thing laid to his charge, since he came from prison. Heard others discuss his truth and veracity, but can't name any one but Chapman.

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Rouse Lemn, of Sharon, a farmer; has lived there fourteen years. Know Phelps, lived one and a half miles from him; know his reputation — bad — from it, would n't believe him under oath.

Know some of defendants; am brother to Lemn, defendant; have seen, but am not acquainted with others of them. Live twelve miles from the Centre.

Cross-examined — Am some acquainted with Burnett; have known him seven years. Have had no business with Phelps since he came from prison; live three miles from where he lived since he came from prison. Since he came from prison, and before the arrests, I heard no person speak of his truth and veracity.

Heman Gage, of Sylvan, a farmer—Lived there twelve years. Know Phelps for eight or nine years; have resided one and a half miles from him since he left prison. Know his reputation — it is rather bad; from it, would n't believe him under oath; am not acquainted with any of defendants, save Burnett.

Cross-examined — Was first subpœnaed by Crowell, and after by James. Lived in Lima till the present harvest commenced; worked on the S. R. R.; was there four weeks in March, 1850, and also this spring. Conversed with Powell and Chapman about his truth, before the arrests. Chapman said, he was n't to be believed, and he was a dangerous man; this was about a year ago, at Fisk's; do not recollect that Fisk was present; do not remember any more of the conversation, or any one else that I heard speak of his truth, before the arrests.

James Hatt, of Sharon, a farmer — Have lived there eleven years; know Phelps when I see him; have lived two or three miles from him; his reputation is bad; from it, would not believe him under oath. Among defendants, know Burnett and Fitch; no particular acquaintance with Fitch; live sixteen miles from him.

Cross-examined — Have seen Phelps often since he came from prison; rode with him once to a suit at Robinson's. When we came home that night, Phelps said the depot was burned; came home before Phelps. Platt was there; did not hear him say the depot was burned. At the last election, Thatcher and S. had a horse race; do not remember that Phelps was there; he did not give me money to put up the stakes; I put up five dollars; it was not bad; did not get it from Phelps. Heard Noah Phelps speak of his truth and veracity, last winter, at my house; he said he was most any thing but right; he was speaking of some wheat Phelps had taken off his farm, or out of his barn, to feed his horse; he spoke of this twice, and said about the same thing each time. The second time was at Noah's house; he did not then say any thing of his truth and veracity; but he did one day, near the gate, in the early part of last winter; I was inquiring about some money; Phelps told me he had to live out, and Noah said it was all fudge, you must not believe anything about it. Might, but do n't recollect that Noah ever said any thing else of his truth and veracity.

Before the arrests I heard most every man I heard speak of him, speak against his truth and veracity — Judge Francisco, Geo. Phelps and Powell. Think I heard Powell say he swore before him to something he did not believe, or thought was n't so; this was at Godfrey's steps.

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Do n't at present remember any one else I heard speak of him. Fenn subpœnaed me.

M. Dwelley, of Grass Lake, a farmer — has resided there seven years; know Phelps a little; lived two or three miles from him; know his reputation — bad — from it would n't believe him under oath. Know Fitch and Burnett; do n't know that I know any other of the defendants, my acquaintance with Fitch is casual.

Cross-examined — Before the arrests heard only B. Butterfield and E. Francisco speak of his truth. May have heard others, but can't recollect that I have.

Daniel Tichener, of Waterloo, Jackson county — Has lived there ten years, and am a farmer; know Phelps a little; live about three miles from Metcalf's place; know his reputation, it is rather bad, has been so formerly; from it could n't consistently believe him under oath; know Burnett, but do n't know I ever saw the other defendant.

Cross-examined — I did not vote for Burnett when he was elected judge; he is only judge because he is called judge; I got acquainted with Phelps at an auction in Sylvan a year ago last spring; did n't then hear his reputation discussed. Often heard his reputation discussed before the arrests — by Jas. Hatt for one; he was the first pointed out Phelps to me; his appearance was singular to me, he did n't look to suit me, did n't look honest to me, and I asked who he was; all his features looked bad to me; I have noticed these things for twenty years and generally found myself right; I generally form an idea of a person's character when I first see them; I do n't know that I will tell you the secret of judging by features. At that time Hatt merely told me who he was, but he afterwards, almost any month for several years, spoke of Phelps' truth and veracity; I can not state any particular month; within six months he spoke of it in my house; he was n't to be believed. I once spoke of trading a farm with Phelps; did n't speak to him of it, but to the neighbors; from what they said I thought he had no farm, and Phelps after told me he had sold it. I said to Hatt, I heard that Phelps had the farm in Livingston, and he said there was no dependence to be placed in it, and it would n't be worth while to go and see about it. I had to believe Phelps when he said he sold it. If I give you another name, you will want to know where, and I will not give another name. I can't give any other name.

James Irving, of Sharon, a farmer— Know Phelps some. When in Sharon he lived a mile from me; his reputation is bad; from it would n't believe him under oath. Of the defendants, know only Burnett; live six or seven miles from him.

Cross-examined — When Phelps lived in Sharon, I was on the next farm to him. Since the arrests have heard a great many speak of his reputation. I can't name any one person in particular I heard speak of his reputation before the arrests and since he came from prison.

H. Hulbert, of Grass Lake, a farmer — Has lived there eight years. Know Phelps; lived three or four miles from him. Know his reputation; it is bad; from it would not like to believe him under oath. Know Burnett, and had an introduction to Fitch; that is the extent of my acquaintance with the defendants, so far as I know.

Cross-examined — I was introduced to Fitch in Jackson, and I saw

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him at a railroad meeting at Grass Lake. I know Phelps; I have spoken to him both before and after he was in prison. The last time I spoke to him on Piety Hill, about taxes; the former time about a saw-mill.

Since he came from prison and before the arrests, heard old Mr. Irving speak of him. This was a year ago last spring; he said Phelps would tell more stories in one hour than a man could possibly believe in two.

Have also heard Butterfield say he could n't be trusted, and tell of the wheat.

Esq. Dwelley, at his own house last winter, spoke of him. This was the same time that Butterfield said what I have mentioned. Dwelley said he thought Butterfield would not sign another petition to get him out of prison.

I can not name any other person I heard speak of his reputation.

Isaac Irving, of Sharon, has lived there three years — Follows farming; knows Phelps; lived two and a half miles from him. Know his reputation to be bad; from it would not believe him under oath.

Know Burnett. Live six miles from him. Have seen two or three of the other defendants, but am not personally acquainted with them. Live eight miles from Leoni.

Cross-examined — Burnett was counsel for me; defended me for assault and battery on a Canadian schoolmaster.

Before the arrests, I heard Butterfield tell of the wheat, and say he would steal. Do n't recollect any other person in particular, but never heard any one speak well of him. I work round with different persons. Two years this summer Horace Hocum said he was n't a likely man. Do n't know how he came to speak of Phelps; that was all he said. Do n't recollect if he said then he would n't believe him. Do n't know he ever again spoke to me of him. I was subpœnaed by James. I paid my own expenses, and expect to pay them back. Can't name any other person I heard speak of his reputation before the arrests. I do n't expect my expenses to be refunded.

August 6th, P. M.

Charlotte Beeman — Reside at Leoni. In the summer of 1850 I taught school at Michigan Centre. Was frequently at Fitch's; was at his house the first week I taught. My school commenced on the 16th of April. After the first week I was there frequently. Was at his place the 7th of July, and stayed there over night; on that night Fitch and his wife slept up stairs, in the south-west room. Was at his house over night on the 27th of August, and then they slept in the same room. On this last night, Mr. Delemater called after we all retired; also, after I retired, Mrs. Fitch called at my room, on her way to her own. These two facts fixed that night in my mind. They were expecting Delemater, and when he came, Fitch went down. My school closed the second week in September. Stopped last at Fitch's during school. Think Miss Clark was at Fitch's when I went home. Am sure she was a short time before school closed. Also taught school there in the summer of 1849, and was frequently at Fitch's. During the last part of the summer, Fitch and his wife slept up stairs.

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In the summer of 1850, Miss Clark was sick some time. She went home when she was sick, on one occasion.

No cross-examination.

Van Rensselaer Arnold, of Leoni town — Lives south-east of Michigan Centre. Was at Filley's on or about the 11th of April last. Worked for him on the forenoon of that day, splitting rails. He worked with me. We quit work about 11 A. M., and I went home to dinner. Left him where we were working, after me. About three to four P. M. I went down to Filley's house. Filley, in the forenoon, said he would go to his nets, and if there were any fish he would give me one. Went down in the afternoon to get the fish. When I went down, before going into Filley's I stopped near the house where Filley kept store, and there he overtook me, and he and I went together to his house. He went in at the south door; I went to the west door, and I there stopped several minutes on the platform. The south door fronts on the railroad, the west on the road. The west door opens into the barroom.

While I stood on the steps, the barroom door was partly open, and Filley came into the barroom from another room, and a gentleman who was standing near the north door said, "How do you do, Mr. Filley," and Filley replied, "How do you, Mr. Lake." Lake then said, "I have a bundle I wish you to take care of, while I go up south." Filley then went back into the room from which he had come with the fish, and at once returned and unlocked his liquor room, and Lake picked up a bundle and said he wished he would keep his boys from it, and to put it in or on a barrel. Filley left the key in the door, and went behind the counter, and Lake put the bundle in the room, and took the key out of the door; laid it on the counter, and went out toward the ball-alley. I do not know what was done with the key after it was laid on the counter. I went into the barroom when Filley went behind the counter, and while I was at the counter the man came out of the room and put the key on the counter. The bundle was tied in something reddish. Did not stay in the barroom two minutes; went straight through it, and home. This was the 12th April. Know it, as it was the last day I worked for Filley, and I charged him by the day.

Cross-examined—At this time, I lived three-quarters of a mile south-east of the Centre, on the Napoleon road. Left home after breakfast, to go to work, between six and seven. First saw Filley when I was splitting rails. Worked there three and a half days splitting rails; did either the day or the day but one before that day. Worked there, I think, on the 4th and 8th, and I think on the 10th; and think I worked a day and a part of the next day after. Splitting rails was all the work I did for Filley this spring. Am not sure the 4th was the first day, but think it was; looked at the charge on my book lately. Know it is charged on my book, and the date is charged on the book; expect there is, know there is; saw it about three weeks ago. There is but one book in which I have charged against Filley; that book is at my house. It was charged about the time I did the work. Do n't know that all the dates are down; the 11th is. Saw it ten days or three weeks ago; made that charge at the time I did the work. Champlin came to my house about three or four weeks ago, and asked me if I had n't seen a man bring a bundle there. Three or four weeks ago, Livermore and

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Spaulding came so my house, and spoke about a car running off near the Centre; this was before Champlin came to me.

Guess there are two dates to my charges against Filley for the work at the rails. It seems to me I worked at the same place the day before the 11th. Where I split the rails is about sixty rods from my house. Put up a little fence round my door after I got home, and went alone to Filley's; when he overtook me near Tull's, he had five fish with him. Had no business at Filley's but to get the fish; got something to drink at Filley's. Never have seen Lake since. Do n't know if I would know him now. Had seen Phelps often; did n't see him that day; saw Filley's wife that day, think in her back room. Got the fish in the room the stove was in.

I got the fish after Lake had gone out, and after I got the bundle. Can not tell how he was dressed. It appears to me he was a sharp-faced, peaked-nosed man, with light hair, and taller than Mr. Van Arman — slighter than Mr. Van Arman, and of a lighter complexion; think he had on a cap. Am sure he had either a hat or cap on, but not certain which. Lake spoke to Filley first. Each called the name of the other in saluting. In May, I worked round the tavern planting potatoes, corn, and beans for Mrs. Filley; did not tell her about the bundle. Do n't know that it is of any importance. Did n't know that Filley was charged with delivering a box that night. When Livermore and Clark saw me, they did n't tell me so. Have heard read the testimony of Phelps and Lake. Knew these defendants were arrested about the time of the arrests. Read in the advertisement of the court, printed against the defendants, that they tried to kill 1,000 men. Read this at Jacksonburgh, in a newspaper, about the 20th of April, in Hurse's grocery. Did not read it, but heard it read by a man there. May have heard it read; it seems to me I heard it read, that Lake and Phelps swore they had received a match that night, at Filley's, in a box. Never heard of Peeler and Kellogg swearing about seeing a bundle with Lake and Phelps. Do not know where I first heard that Lake and Phelps received a box and match at Filley's. It is over ten days since I heard that. When I heard that, it did not occur to me that what I saw could be material. What attracted my attention was, his being so careful to keep the boys away, and lock up such a homely bundle. It was tied in a reddish cloth or handkerchief. He carried it in both hands into the room. Did not see him pick it up, or where he took it from. Did n't look in till he said he wanted Filley to keep the boys away from it. When I turned in, Filley was unlocking the door, and Lake coming towards him with a bundle; when Filley saw he had a bundle, and wanted it taken care of, I looked in, and then saw Filley unlocking, and Lake coming towards him with a bundle. When I looked in I was outside the door. Was outside and had n't looked in till Lake said he had a bundle he wanted him to take care of. Filley was at the door, and Lake coming towards him with a bundle. Can't be sure Filley was at the door, but if he was n't at the door, he was coming to and near it.

The south door there which Filley went into the house by, leads into the kitchen. The next I saw of him was when he came into the bar, and Lake said, "How do you do, Mr. Filley," and Filley replied, "How do you do, Mr. Lake," and Lake said, "I have a bundle I want you to

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take care of." I then went in, and Filley went back into the kitchen and returned. I did not see Filley go back into the kitchen, but heard him wheel, and they stopped talking. I did not see Filley come in from the kitchen, but he came from there as near as I could hear. I am pretty certain Filley went back into the kitchen. Do n't know where Lake stood while he was gone. Did n't see either of them till Filley returned again from the kitchen after they spoke. I do n't recollect anything I saw while I was standing at the door. My side was to the door and my face to the north. I did not see Filley leave the room at all after Lake first spoke to him. When I first looked in, Lake was either picking up his bundle or going towards Filley with it. Filley, I believe, unlocked the door, but did not go into the room. I did not see Filley till he went back to the counter; did not state, I guess, that when I looked in Filley was either unlocking the door, or going towards it, and Lake picking up his bundle or coming with it towards Filley, and half bent. Did not state I saw Filley unlocking or going towards the door. The door I was at was a little north of the room. The room is in the south-west corner of the barroom, and the door of the little room opens on the north side.

[Here the witness is shown and identifies a plan of the barroom at Filley's.]

I lived in Leoni for six years. Have a farm and family there. Before there, lived in Ohio, in the town of Perry, for two years. Before that, lived in York state for forty-four or forty-five years in different parts of the state. Never lived in New-Jersey. Can make shoes and whiplashes. Learned to make both of these at home, and never learned any other trade. Never lived in or near Auburn; was born in Vermont. My father was dead; my mother came to New-York with me. Was in prison in New-York city, on a charge of breaking open a jeweler's shop; was tried, found guilty and sent to state prison for five years. Only staid in sixteen months. Was about five months old when my father died. I know all of the defendants. They are neighbors of mine. Have gone to Filley's sometimes for my bitters, but not often. On the 11th, I went there for the fish; have known Mr. Higby for four or five years; have seen him every week for four or five or more weeks. Have not spoken to him more than to pass the time of day lately. Have several times spoken to him about this case; can't tell how often I have spoken to him about my testifying, in the last few days; spoke to him about it to-day in the witness room; never had my testimony put down in writing; some one (Mr. Tombs) wrote it down to-day; he did not read it to me, nor did I sign it.

I keep my book in a chest, at my house. It is bound, and I call it my account book.

It was after I saw Champlin, that Mr. Higby first spoke to me about my testimony first, on the road. He has been to my house, but not about my testimony. Mrs. Filley has never spoken to me about my testimony. No person ever spoke to me about my testimony; but I spoke to Champlin about it. Do n't know who began the conversation with Champlin: told Champlin I saw the same box. I called it a box, but it was bundle I said. The bundle I did n't measure; it was about fourteen or sixteen inches long, eight or nine thick, and eight or nine

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wide; this is all guess work. It did not appear heavy by the way he handled it. I did n't lift it or touch it, and I do n't know if it was heavy. I split rails till about eleven, and went home; got home before noon. Had dinner before I went after the fish. Had dinner about twelve. Stayed at home about three hours, and then went to Filley's; saw no one there but Lake and Filley. From Filley's I went home. The next day I worked getting dung out of my stable. The day following I went to Brooklyn, and stayed there over night; it is about eleven miles from my house. Think it was Friday I went to Brooklyn, or perhaps Thursday. The day after I saw Lake, I worked at getting out dung, and the next day I went to Brooklyn; and that was Thursday or Friday. Have forgotten what day I went to Brooklyn. Recollect the day I saw Lake. The next but one day after, I think I went to Brooklyn. Know it was after I saw Lake, I went to Brooklyn. Think it was the second day after I saw Lake I went to Brooklyn. Am sure it was not Sunday I went to Brooklyn. Think it was before Friday I went to Brooklyn. Think it was Thursday I went to Brooklyn. Think it was Friday I returned from Brooklyn. At Brooklyn I stayed over night with Mr. Quigley, about a mile from the village. I left my house in the forenoon, and went straight to Quigley's. Got there about night. Next day got home in the afternoon. Went after wheat. It seems to me the day after I got home was wet. My impression is I went to Brooklyn on Thursday, and returned on Friday. Can't tell what day I saw Lake; it seems to me it was on Friday I saw Lake. Am not sure it was on Friday I saw Lake. It still seems to me that I went to Brooklyn the second day after I saw Lake. It yet seems to me it was Thursday I went to Brooklyn. Can't tell what day I saw Lake. It seems to me it was Tuesday I saw Lake. It still seems to me that I went to Brooklyn the second day after I saw Lake; saw Lake before I went to Brooklyn, and it seems to me I went to Brooklyn the second day after, and on Thursday; but you have mixed me so I am not certain election was on the 7th. Do not know how many days after I went to Brooklyn. My impression is I do n't know if it was the same week. My impression, do n't know to answer, and wo n't answer you. Can't tell if it was the same week of election, I saw Lake. It seems to me that it was the same week of election, I saw Lake, and went to Brooklyn. Can not state if I saw Lake and went to Brooklyn the same week. It seems to me I saw Lake the latter part of election week, and went to Brooklyn after. Know it was on the 11th I saw Lake. Got no wheat; did not say I got any. Applied to Quigley for it, but did n't get it.

Can write and keep my own books; looked last at the book on Sunday; made a charge there last Sunday, with the dates; it does not concern this case what dates; the dates I put down were the 3d, 4th, and 5th of this month; it was Monday I made the charges. Misspoke when I said the 6th; I made a charge for the 4th; worked for Laycock on the 3d and 4th; worked for him on Sunday; now you have it.

Have not looked at any almanac lately; no one spoke to me of the 11th. Did not see in the testimony that it was the 11th.

To Seward — Have been in this state six years; lived in Perry, Lake county, Ohio, for one year; lived in Hector, N. Y., twenty-one years. Was first married in N. Y. Have married second time in this state. It

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is about thirty-six years since I was convicted in N. Y.; was convicted in Oneida county; Hoars and White were my counsel; they found I was put in wrongfully, and got a petition, and Gov. Tompkins let me out. Went from Vermont to N. Y. while an infant; was sometime in Oxford, N. Y.; since I have been in this state, I have followed farming and making whiplashes, have a farm of thirty acres; it was about the commencement of this suit that Livermore and the person I supposed Spaulding, came to me; Livermore said he understood I was coming to swear the Prices' were with me the night a car ran off. They asked me if I knew the name of the engine? I said not. Went to Brooklyn more than once last spring; it seems to me I went there very soon after I saw Lake; never saw Lake but once at Filley's. Have been twice or oftener down to Filley's for fish; a few days before that, he promised me one, and I got it from him at the pond.

When I was on the steps I do n't know where Lake came from; the first I knew of him being there, was when he spoke to Filley. Live near the pond, one half or three-quarters of a mile from Filley's. It was eighteen or twenty rods from Filley's house that he overtook me; after I got the fish I went home. Have no recollection of meeting any young men.

To Van Dyke — The pond is about ten rods from my house, and is about one-quarter of a mile from Filley's. Go by its side from my house to Filley's, saw no person along there as I went back from Filley's.

Went to Quigley's every time I went to Brooklyn; went there twice in April. Can't tell how long intervened between the times. Once I went and returned the same day. Mr. Quigley is the one; only went twice to Quigley's in April, but stayed over night only the once.

Joseph H. Taylor, of Jackson — Is an assistant keeper in the state prison; first became connected with the prison in May, 1846, and remained till April, 1849, then left, and returned there last December; there was a convict, Henry Phelps, there when I came, and in 1849, I left him there, am somewhat acquainted with the reputation he had then for truth and veracity; it was bad; judging from it, I could not believe him under oath.

Cross-examined — During my first eighteen months I was guard on the wall for six hours each day, and I was three hours each day attending to those confined, and three hours round the yard.

During these eighteen months, Phelps was in the weave shop, under Lathrop's contract.

I learned his reputation from the keepers and others; I heard my brother B. C. Taylor speak of him. He is now deceased; also Palmer, who was a guard. Think I have heard V. J. Pease also speaking of him; can't think of any one else.

I can't say how often I heard his reputation spoken of.

When I was yard assistant-keeper, I remember Mr. Palmer speaking of Phelps' talking; he said he told Phelps of it, and he would lie out of it. It is a rule that prisoners shall not talk, and they are punished if they do. This was the kind of talking he said he denied.

Taylor told me of Phelps feigning fits, and said he would go into any deception to favor himself; if he really had fits, it would exempt him from labor. Before I left in '49, Phelps, I think, was reported and

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shackled, and Pease said he was not a man to be depended upon. He was speaking of his word. Phelps was reported and denied it, but was punished. I understood Phelps was pardoned out in or about May, '49; think it was in '48 Pease spoke to me. What my brother said, was in 1846. It is on what I have stated, that I base my opinion of his reputation.

Isaac Purdy, of the state prison, is an assistant-keeper. Went there five years ago last June. I knew Phelps there; know his reputation for truth and veracity among the keepers; it was bad; from it could not believe him under oath.

Cross-examined — Was not there when he went there. When I went there, went as guard on the wall. All the time he was there, my duties were on the wall, and at night in the yard. I heard Dorrell, a keeper, say he was not to be believed or depended upon. It was in the prison office he told me this; he said he was a deceitful man, and not to be trusted. He did n't say, and I did n't, and I did not inquire in what respect. I also heard Pease, four years ago, say Phelps was not to be trusted, and wanted close watching least he should get away.

Mr. Dorrell always said he was n't to be trusted; I suppose they told me to make me more vigilant. Do not remember any other person I heard speak of his reputation. Presume others spoke of him, but I can't remember the fact that any one did, and it is from what I have stated that I swear to his reputation in the prison, and that I would n't believe him under oath.

Wm. Bhee recalled — Lived in Sharon for over two years; about three miles from where Phelps lived. Know him, and his reputation is bad; from it would not believe him under oath.

Cross-examined — Before the arrests heard Arnold Bill speak of his reputation. Think he said he was n't to be believed under oath. Can not say who first spoke of Phelps.

Heard S. Chapman say he was not to be believed under oath, that he was a rogue, and had been in prison for horse stealing. Heard C. Raymond speak of him last summer. He spoke of his reputation, and do n't know what he said; believe he said he was not to be believed. Do n't recollect any more of the conversation. Heard G. Phelps and N. Phelps speaking of him. It is only two or three weeks ago I heard Noah Phelps speak of him.

Heard Samuel Raymond speak of him once since the arrests, and think once before. Presume I heard him speak of his reputation half a dozen times before the arrests. He said he did n't believe he was a man of truth and veracity, on account of some difficulty about a line fence. Had heard the matter talked about so much, I did n't pay much attention. At the same time I heard him speak about some sheep being put in a yard, on account of the fence. Do n't remember any of his other conversations. Can not name any one else who said anything particular about his truth and veracity.

Delos Fisher — Live in Jackson; was connected with the prison, three or four years. I commenced there, overseeing a shop in 1845; left there three years ago last April; knew Phelps there. A part of the time he worked in the shop where I was; knew his reputation there for

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truth and veracity; it was bad; from it should not be willing to believe him under oath.

Cross-examined — For a year or two he worked in the shop I was in — the shop was used for coloring, fulling, &c. It was latterly partitioned off, but not at first; that shop was occupied two years for fulling and coloring cloths. It was used for coopering. For between one and two years that shop was used for both purposes. Knapp and Brigham were foremen over Phelps. Worked there before witness came there; can't tell who came first, Knapp or Brigham. Phelps worked there a part of the time while Pease was there, not positive; Pease was there one and a half or two years. Pease was not in the shop over one year, probably. Sure that Phelps was there, as sure as of any thing. Phelps was fulling some, perhaps coloring yarn. Heard Smith Titus speak of him; he said he was n't to be relied on for his work; can't tell definitely what Titus said of him, but can't tell what. I heard Knapp speak of him. Knapp said he was not to be depended on for his work — that he could not trust him to do work. There was a belt cut at one time, and at that time I heard him speak of Phelps. Do n't know that it was laid to Phelps by any one, but he was engaged about the work. Never heard any one say Phelps did it, but Knapp and Brigham said they thought he did it. Can't remember any others I heard speak of Phelps. What I have stated is the basis of my opinion of his reputation.

Elijah F. George, of Grass Lake, three and a half miles from the Metcalf place. Known Phelps for two years; his reputation is bad. Would n't believe him under oath.

Cross-examined— Before the arrests, heard Eddy Francisco, in March, speak of Phelps; he said he would not believe him on oath; they were speaking of his hiring hands for a job of grading. Also heard Stephen Whitney, about the same time, say he would n't believe him under oath. Have heard Horace Francisco say a man who worked for him would never get his pay. He said he believed him a dishonest man. Do n't remember anything else he said. Never heard him say, if these did n't get rid of Phelps, he would take care of them. He said, if defendants went to prison he should n't wonder if he got popped over. I did not give my assent. Do n't recollect any others I heard speak of his truth before the arrests.

David Palmer, of Grass Lake, a mile from Phelps' place — Has resided there two years; his reputation for truth and veracity is bad; from it, would not believe him under oath.

Cross-examined — Before the arrests, heard B. Butterfield and old Francisco speak of his reputation; also, Moses Metcalf. About a year ago, at Stephen Whitney's, Metcalf spoke of him; they were speaking about some deal that he had with him. I was not attentive, and can't tell what he said. Whitney said Phelps had told him a long story about some land. I understood Whitney to say he started to go to the land, but it was three miles off the road, and he did not go to it.

Christopher Kyser, of Sylvan — Phelps' reputation is bad; would n't believe him under oath, from it.

Cross-examined — Never heard anything about him till after the arrests.

Court adjourned to the 7th, at 8 A. M.

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MORNING SESSION — 50TH DAY.

THURSDAY, August 7.

George A. Phelps — Have lived at Sharon seven years. Have known Henry Phelps since 1840. His last residence was five miles, his former half a mile from me. Know his reputation; it is bad, and from it I should n't like to give him credit under oath. He is married to my sister, and is cousin to my father. He lived at Michigan Centre when I first knew him.

Cross-examined — The first time I saw him, was at my father's in Sylvan. He was about four and a half years in prison. The most I have heard of his reputation is since the commencement of this suit. The reputation I speak of was gathered some before, but most since the arrests. Powell, Aroud Bell, and Esquire Porter are those I heard speak of him before the arrests. Last fall, at my place, Porter was asking where he was. I said he was on the railroad somewhere, as people told me. He asked me if he was better than when he went to prison; I said I did n't know. He said he did n't believe he was; he did n't speak of his truth and veracity. In April, just before the arrests, Powell spoke of his truth and veracity; he spoke almost every day of Phelps; he was the general subject of conversation ever since he came from prison. Powell said he was no better than when he went to prison; that he swore false before him, and that he could n't believe him under oath. Think this was in February; he was speaking of a suit which occurred before he went to prison. Guess I heard the same story every month from Powell. He told it again since the arrests at Franciscoville; Judge Francisco and others were present. I have had no difficulty with Phelps; have said a good deal against him since the arrests. People would ask my opinion, and sometimes I may have volunteered it. Mr. Fitch gave me ten dollars at the jail; he did not owe me, nor say what it was for. I have seen several witnesses, but not to get them here. On Saturday I went to see some witnesses; I went to collect a school bill, and spoke to those I saw, against his reputation. I was five miles from home, but was not collecting school bills at that distance.

To Frink — The ten dollars I gave among some witnesses who had no money, to pay expenses home.

William Havens — Have resided at Sylvan for twelve years. Know Phelps' reputation to be bad for truth and veracity, and from it, I could not believe him under oath.

Cross-examined — Acquired a knowledge from people's talk. Can't say that I heard a majority speak badly of him. Elihu Frisby and Brown Butterfield are two I heard speak ill of him. Do n't know as I think of any other names at present.

Hiram Drew — Live at Henrietta, Jackson county; lived there for eighteen months. Before then, lived twelve years in Grass Lake, a mile and a half from Phelps. His reputation was bad, and from it I would not believe him under oath.

Cross-examined — I was subpœnaed by H. Francisco; he did not say what for; may have spoken to him before, but can't tell what he said, or what I said. Remember what people said of Phelps. Heard Horace Hocum speak of him in March; he was speaking of his being a blackleg,

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and of his keeping blacklegs there; did n't say who. Think he said a man was there who was in prison, and strangers were coming and going there.

Moses Metcalf saw Alfred, in April before the arrests, at Moses' house. Spoke of his coming and going on the cars, and he thought there was some blacklegging going on. A man came while I was there, and said he had lost horses. Think his name was Orman Clark; he said if he could find Phelps he would get his horses, that he thought Phelps had a hand in stealing them, and could find them. Likely his expression was that Phelps knew it. Am sure that this was this spring. Moses and Alfred Metcalf were there, fixing up the old house Phelps lived in. He came with a buggy and pair of gray horses; he was a middling-sized man. Metcalf told me his name; think it was Clark, but am not sure. He said he lost the horses some considerable time previous to that. He wanted to find Phelps, hoping he would get information, and intimated an opinion that he had a guilty knowledge about the horses.

Judge Francisco once said that Phelps was owing him, and he dare not prosecute lest Phelps should do him some private injury. This was over a year ago. That was all he said. I do n't know that I can tell any one else who spoke of his truth and veracity before the arrests.

Dixon Burchard — Has lived in Sylvan fourteen years; known Phelps eight or nine years. He lived once about two, and once about six miles from me; his reputation is bad, and from it I would not believe him under oath.

Cross-examined — Before the arrests, heard my brother-in-law, Esq. Frisby, speak of him at his own house; he said, in a case between them, he thought Phelps had sworn false. I understood it was in getting the case continued, he swore false.

I can't mention any other person I heard speak of his reputation before the arrests, but it was the subject of general conversation.

George White, of Detroit, a carpenter — I made the match now shown me on yesterday; it is of white-wood. I at the same time made another. I did not measure, but I think it was made from a five and a half inch plank; think it is well seasoned, and a year old. I bored the holes with an inch and a quarter, an inch auger, and a half-inch bit.

Says two other pieces of wood shown him, with holes bored, were bored, he thinks, with an auger.

I partly bored match now shown me — is the second one I made yesterday.

William B Brown, Grass Lake, about a mile from the Metcalf place, knows Phelps, and his reputation for truth and veracity—bad; from it, would not believe him under oath.

Cross-examined — I was away from Grass Lake for a year before last January, but was back there twice during it.

After he came from prison, and prior to the arrests, I heard B. Butterfield speaking of him; think this was in spring, and since the arrests.

Think I heard Judge Francisco speak of him before the arrests. Think it was at his store; think this was last spring. I think it is not six weeks ago. I can't name any one else.

Benjamin Derrick, of Leoni village; knows Fitch and Burnett. Know William D. Westcott; recollect Fitch being at Leoni on the occasion of

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a lawsuit between Barrett and the Railroad Company. There was a theatrical performance that evening, which Fitch attended; the performance was over about ten, P. M.; the same afternoon there was a democratic caucus; Fitch was at it. The caucus was noticed for two, P. M. and commenced about that hour.

Cross-examined — That was the 13th of September, 1850. I was one of the actors, and kept a record of the performances. We performed about once in four or five weeks, or oftener, there; the pieces that night were, Perfection, and the Hole in the Wall for an afterpiece. Fitch stayed for the afterpiece.

The caucus was to send delegates to Jackson.

The performance commenced from seven to eight, P. M; do n't know that Fitch was there at the commencement, but in about ten minutes after, I saw him.

John F. Crowell, of Leoni — I went once last year in the fall. I went to Michigan Centre, with Mr. Sackrider, on a Sunday; stopped at Filley's; heard some conversation about money between Filley and O. D. Williams, but did n't see any paid over. The conversation was out doors, on the north side of the barroom. I heard Filley say to Williams, that taking out his liquor and alley bill, which amounted to three dollars, there would be two dollars coming to him of borrowed money. I think Filley said he would let him have what was coming to him before he went away. I did not hear Filley say that the Gazelle affair, he thought, was settled; that Fitch had paid him twelve dollars, and he ten.

I was only there once on Sunday, last fall, with Sackrider.

Cross-examined — Am aged eighteen years; have lived in Leoni fourteen or fifteen years; think it was last fall; am sure of this. Could tell what month; am sure it was on Sunday. Sackrider, B. Myers, and Coykendall were with me, no others. At Filley's, saw Williams, D. Myers, and Mr. Jackson; do n't remember seeing Fitch or Wells there. Do n't know Westcott; the team was one Sackrider had; arrived at Centre about two or three, P. M. Do n't think I had been to dinner, but may have been before we left Leoni; think we left Leoni in the afternoon; am pretty sure of that. Filley attended the bar during the day; no other person did that I know of. We took supper there about five, P. M. A pleasant warm day. First saw Filley in the barroom, or about the door.

I talked with Williams, can't tell what. Know Williams and Filley well; Corwin may have been there, can't tell. Filley said he had been hunting and had killed some ducks. I remember Sackrider asking us to go to the Centre with him; on the way we talked of drinking. No particular subject was talked of. I told Filley that Mr. Coykendall told us he would pay our bill; can't say if Sackrider also said so to him. Williams was not there for an hour or two after we arrived. We left there about sundown. D. Myers and Filley were there when we arrived. I did not see any money handed by a man in the bar, or any one. Think I heard Sackrider say he was in hopes some of us spoke to Filley about supper, and that called out the remark. Filley did n't ask him for change; before supper, Sackrider treated; Williams arrived before supper, but neither he or Williams eat supper with us. I went once, perhaps twice, to the shed to do a job myself. I went to the barn while there;

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it was when I went to the shed, that I saw them at the north of the barroom. Can't say if this was before or after supper. I did n't say anything to them, or they to me, I simply passed by them. I was out five or ten minutes; think they were not there when I came back. The first I heard was Filley, saying what his alley and liquor bill amounted to. I noticed them step out together; do n't know what made me notice them step out. They went out the north door and stood near the house west of it. I stopped near them a minute or two; do n't know why. I remember Sackrider asking Filley if he wanted to buy some soda bottles; do n't remember any one else being there but those I have mentioned. Do n't remember any man being taken out of the wagon, and being pawned for liquor jocosely; if it had been done I would be likely to remember it. Have told all I heard between Williams and Filley. Did not see any one roll that day. Think I was not in the ball alley; do n't know of any one going to the alley that day. Heard no trouble between Filley and his wife, about feeding such a set without pay. Sackrider was ready to leave before the rest of us, but I do n't remember his being carried back from his wagon. There was a frolic, but there was no pulling and hauling. I drank five to eight times, an ordinary glass each time; was not drunk. Think I drank six to eight times; we had liquor, and I also drank on the way. Know Williams three or four years; Filley about the same time; Corwin since I was a boy. I sent a line, two weeks ago, to Williams, and that was the first I mentioned of this to any one. I stated to him I was there that day, and could tell something that transpired. I sent it by Coykendall. I have worked for Coykendall; worked for him last week; before that, worked for young Sackrider. Can't tell the time, or if it was before or after supper I heard Filley and Williams. I should think they had no books or papers when they spoke; did not see Filley take down any books. Can't state if they spoke to me; no reason why I should not remember that as well as what they said to each other.

Edwin Smith, of Clinton —Am agent of the "Novelty Works;" we grind flour, run a distillery, and have machinery. The elevators at our works took fire about three years ago; the fire took at the head of the elevators, was caused by friction; the elevators are always driven on a pulley, by a power from the upper end; the belt passed over the pulley at the top, and one at the bottom. The friction that caused the fire was at one of the journals at the gudgeon; the journal was cast iron, the gudgeon of white maple. I think there must have been some stoppage of the oil holes, or something wrong, when the fire took place. There was provision made for the supply of oil. My experience is, that elevators, well constructed, and well cared for, cause no special hazard; but not well attended to, they do.

The revolutions of ours was about forty-five a minute. I have often used the soft metal box; I have had them do better as well as worse than wood. In heavy work I think them better, but in light work no better; if neglected, I think them worse than wood; generally use them in heavy work.

I was at Mr. Howard's last evening and saw the two matches in court now. I saw the large holes, one of them filled with cotton, paper and oakum, and some of them saturated with turpentine; one hole was filled

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with paper and oakum in the centre. We tried to fire it but it made no progress; we tried to fire from the small lateral hole. A second hole was filled with cotton and paper pressed down. We tried to fire it for ten minutes, but made no impression; it produced no flame, and little smoke, if any. It went out itself, as did the first hole.

A third hole was filled with paper, cotton and oakum, pressed in more loosely than the others. We tried to fire it five to ten times, but could not, and gave it up.

A fourth hole was stuffed with paper and cotton, and perhaps some oakum; the material was saturated with turpentine; we first tried to fire it with a pine stick, but it went out; we then stuffed the central hole with saturated cotton and fired it; produced smoke, but it went out after a little; I then poured more turpentine in the lateral hole, and it ran over the match; fired it and put it on a spittoon. It burned some time and then went out itself; we also fired the ends of the stuffing that protruded from the large holes. Howard, Seward, Andrews, Delemater, Frink and Miller were there. Have been through the depot. Their elevators were on the usual principle, but heavier; perhaps no more revolutions than ours, but being heavier, would make it more risky. In one match there are traces of fire in the fuse, but not in the large holes.

Cross-examined — Elevators are generally run from below. It is of a strap passing over the pulley below and one above; the space between the pulleys varies with the height of the building; they are rarely perpendicular; the buckets I have are about one-fifth or one-eighth the size of those in the depot. I may have, but am not sure that I ever used soft metal boxes for elevators; the journal that took fire with me, ran in maple wood. I have used Babbett metal, sometimes cut away faster than others, and did not remain cool. I used it for an engine shaft; it was confined in a metal box. I have had Babbett metal heat, but never knew a fire from it; but I have had to stop the mill for it to cool. I may not have examined the Babbett metal by touching it, but am sure the journal was hot; got so hot that filings like would drop. I think likely the Babbett would fuse before it would fire wood. When journals get to a certain heat the iron gets tender and drops off like filings; this I saw in Babbett metal journals. Do n't know it was Babbett, but it was bought for such.

Did not use camphene last evening. I supposed it was spirits of turpentine we used; the two smell so like I might be mistaken. When trying to fire the match we let it stand perpendicular till it went out. One time the fire remained in ten minutes before it went out; it was Andrews or Delemater who saturated the cotton. I never tried, or saw such an experiment tried before; never saw such a match before. The effect of fire on cotton, turpentine, &c., is not in my line of business. The journal that took fire had a wood cap over it; it was about three inches in diameter; I suppose the one in the depot was larger; I did not examine the filings I spoke of, to see if they wore off the iron or the soft metal; they may have been from the metal.

To Frink — We find them so often, that I can't tell which time the fire remained longest.

Robert P. Toms — This morning I filled the centre hole of the match with camphene — the hole had the appearance of being varnished inside.

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Soon after the camphene was put in, the hole was waxed over as it is now. I noticed that the wax, after a little time, fell some into the hole or receded.

Cross-examined — Don't know how — think the wax was put on; the camphene was put in, and the wax was put on so as to seal it in. Saw the matches to-day, before they came to court, in the office.

To Seward — The holes in both matches seem alike.

To Stuart — Am not a good judge of holes. The matches were not out of our office to-day till brought to court. I did not see them last night. I was often out in Farmington; have been there with Frink since the arrests.

To Frink — I went at your invitation, and identified some wax as being from Howard's office.

Isaac Warren — Am an officer of the court. Saw the match placed under the seat for a few minutes before ten. I went out, and when I came back smelled camphene, and saw it was running from the match.

H. R. Andrews — Have before seen the burned match; wax has been put on it since I saw it. It is stained at the lower unbored end, as if with turpentine. Last night, at Howard's office, I saw experiments tried on that match — one hole was filled by some one else, I filled two holes. There was a piece of brown paper put in on a stick, with a hole in the centre — oakum and cotton were used in filling the holes; the holes that were packed hard would not burn at all, the others only a little. Some turpentine was put on the cotton; a candle was used, trying to fire them, till it burned the block some; there were flashes of fire went through one tube, but it went out after a little — smoke went through another tube. The experiments were continued for an hour. The fires all went out of themselves. When we got through, the block was put in a stove. We saw no sign of fire, but thought it safe to put it in a stove. The ends of the tubes were also fired, as well as the base or lateral holes. Looked at one of the matches, the Niles' one, and saw there was no appearance of fire or smoke having passed through the tubes. The cotton used last night was dry before it was saturated with the turpentine.

Cross-examined — The time I say the fire went through, I put saturated cotton in the fuse hole, and fired it.

To Seward — There was a little volume of smoke and odor of turpentine, one time when we fired it. The draft seemed to go from the fuse through some of the larger tubes.

Aaron E. Delemater — Was present last night — charged one of the tubes. I rolled up paper and stuffed cotton round it, pressed close into the tube. I then tried to burn it, by firing the fuse hole; could not produce fire in the body of the match.

A second hole was filled with dry cotton and oakum, a chimney made through the centre with paper; we tried to fire it with cotton saturated, a piece of stick, and a candle. A third hole was charged by Mr. Andrews, principally with dry cotton — we could not burn that. A fourth was filled with dry cotton, and saturated cotton, alternately — it was filled by saturated cotton at the tube, burned a little, and went out; then turpentine was poured round the fuse hole, and it burned better. When the match stood horizontally, the draft was out of the fuse; when perpendicularly, it was through the large hole from the fuse. The centre

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hole was filled with camphene this morning, and I put wax over it. While it lay there, I noticed the wax seemed to recede, or fall in.

Michael Coy — Live at Jackson. On the morning of the 19th April, I was at Michigan Centre, and was arrested with the rest, and went with them to the Chelsea station on the cars. Know Phelps, saw him on the cars, and conversed with him.

Question — Did Phelps tell you in that conversation, if you would testify against the defendants, you could have any place or situation you wanted on the road, and you could have money?

Witness — I do n't think there was any thing said about money, but think he said I could have any station I wanted.

I said to him, I would like to go to Detroit. This was after we stopped at Chelsea, after they told me I must go back. Think it was the sheriff told me I must go back.

I know the situation of Filley's barroom — the liquor room is in the south-west corner; there is a space with a door in the north-east corner, near the chimney; this is about six or eight feet from the north door. The ball alley door is about four rods from the barroom. The door of the ball alley is on the side near the end next the barroom. Believe there was a lock, but no latch, to the ball alley. I was there frequently during the winter. Think I have been there when the door was locked by persons rolling. The ball alley was completed the fore part of last fall. Filley kept his baggage in the liquor room.

Cross-examined — Known Phelps eight or ten years pretty well — never had business, but often spoke to him.

The conversation I mentioned, commenced in the cars before we got to Chelsea; we were standing in the back part of the cars — were alone. When I went into the car, he was speaking to two others, who soon left, and then he and I spoke. He asked if I worked for Shoemaker. I said I did — I said I would like to get a job on the road. He then asked me what I knew of these men, and I replied, nothing at all. This was either at or near the station. Can't say if it was after they told me I could n't come on. I told him at some time, I would like to come to Detroit, but do not know if I did at this time. I spoke with him in the grocery at the station, and he then told me I could n't do better than come out against these men. Do n't think I asked Phelps if he could get me taken down and back, free. I told him I would like to come to Detroit. Did not tell him I knew a good deal about the boys. There were a good many in the grocery. Do n't think I asked him there, to get me a free pass to Detroit and back. Think I told Spaulding I had no money. Phelps did not tell me, if I knew anything I could swear against the boys, no doubt they would carry me down and back free.

August 7, P. M.

Mr Stewart states, that in consequence of sudden and dangerous sickness in his family, one of the jurors was unable to attend this afternoon; the prosecution is desirous to proceed, and will do so, if the defence agree to take the evidence before eleven jurors, and read it over to the twelfth, when he can attend.

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The defence declining to proceed, the court adjourned to the 8th, at eight A. M.

MORNING SESSION — 51ST DAY.

FRIDAY, August 8.

The sheriff reported that one of the jurors was unable to attend.

Mr. Stewart asked, if the court adjourned till the 9th, at two P. M. was it likely that the defence would get through during the afternoon of that day?

Mr. Seward said, in the present situation of the case, he could not answer.

Mr. Van Arman (for the prosecution) renewed the proposal to proceed with the testimony, and read it to the absent juror whenever he could attend.

Mr. Howard (for the defence) thought, in the present situation of the case, they could not accede to the proposal.

SATURDAY, August 9, P. M.

Oliver Kellogg — Have lived nineteen years in Sharon. Know Phelps; he has lived ten miles from me lately. Know his reputation where he formerly lived; it is bad, and I would n't believe him under oath.

Cross-examined — Have not known so much of him lately, as before he went to prison. Heard him spoken of, before the arrests, by Mr. Porter, Bell, and S. Chapman. Can't name any one who spoke of him since he came from prison, and before the arrests. Never had any dealings with him. Have often heard him spoken of since he came from prison, but can't name any person. Heard persons speak on the question whether he had reformed. Mr. Porter said he was n't to be believed. Can't give any more of the conversation or the time. We were speaking as to whether he had reformed. Can't say Porter gave any reason for saying he would n't believe him. I can't give any more of the conversation. Porter was speaking of a lawsuit that was had before he went to prison.

I can't state what Bell or Chapman said. Bell said he was n't to be believed. Can't remember any more of the conversation of Bell, or when it occurred. I know it was in Sharon, as he and I both live there. Do n't remember what brought up the subject. Can't tell the conversation of Chapman, or how the conversation commenced.

Oscar Vosburgh — Know Phelps' reputation to be bad; from it I could n't believe him under oath. Lived two miles from him.

Cross-examined — Used to know Phelps; have seen him only once since he came from prison; have not spoken to him since he went to prison. Was subpœnaed last Wednesday by James; have not seen experiments on matches; heard they could n't make them go. I live about six miles from Metcalf's place. They now talk a great deal of Phelps. Do n't know anything else in particular they speak of. Since he came from prison and before the arrests, heard Wm. Nixon, of Sharon,

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speak of his truth and veracity. This was about three weeks ago. Do n't remember any one I heard speak of him since he came from prison and before the arrests. I heard him talked of, but can't remember any one that I heard.

Filo Hitchcock — Live in the north-west of Sharon; have lived there eighteen years. Knew Phelps a year before he went to prison; his reputation is bad; from it, I should n't believe him under oath.

Cross-examined — Before he went to prison, I lived three miles from Phelps, and about five miles from his residence, since he came from prison. Have not been there for three years, but have met persons from there. Have seen some, but not half from that neighborhood. Saw Francisco two or three weeks ago; also Hale, who spoke of these arrests, and Mr. Porter, who also spoke of them. Did not hear much about him before the arrests, and since he came from prison. Do n't know that I did any one. I speak of his reputation since the arrests.

Hiram High — Live at Sharon; have lived there five years; at intervals, before then, lived three years there, about eight miles from where Phelps lived. His reputation is bad; and from it, I could n't believe him under oath.

Cross-examined — Have been in this state seventeen years; lived both in Branch and Hillsdale counties — at Kinderhook in the former. Do not know Phelps even by sight. Have heard a good deal of him lately, by Bell, Chapman, Godfrey, and I presume others, but I can not think of their names. These three are brothers-in-law of mine; heard them speak of him before the arrests; Bell about the time he was sentenced to prison, but not since. I presume I have heard some of them speak of him since he came from prison, and before the arrests, but am not certain; can't recollect any one I heard speak of his truth in the period specified.

Justin Cook, of Sharon — Has lived there six years. Never have seen Phelps; heard Phelps spoken of. Know his reputation for truth and veracity; it is bad; from it, would be inclined not to believe him under oath.

Cross-examined — Never saw Phelps; do not know where he lived, or in what county, save by report. The first I heard said of him, was that he had been in state prison — heard he came out before this spring. Have heard Esq. Bell speak of him often, in the course of two years past; he said he was a pretty bad character, and might as well have stayed in prison; it was a pity he came out. He was a liar anyhow, and he knew him to swear false before him — he meant he swore false before he went to prison. This was at Bell's house.

Heard Judge Francisco speak of him since the trial. Can't name any one else who spoke of him before the arrests.

George Dorr, of Sharon — Has lived there eight years. Knew Phelps before he went to prison; have known him since by report. Live six miles from Metcalf's; reputation bad; would not believe him under oath.

Cross-examined — Saw Phelps once in prison. Have heard his reputation spoken of a good deal since I came to town. Have spoken with Higby, but do n't know if we spoke of Phelps' reputation. He did not tell me to try and remember who I heard speak of him.

Since he came from prison, and before the arrests, have heard J.

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Moore speak of him. Can not say when. He has frequently spoken of him, both since and before the arrests. One time, a year ago last June, working on a schoolhouse in Sylvan, he spoke of him. Can not recollect what he said; do not recollect that he said he would not believe him under oath. Can't name any time, or place, or anything he said about him, before the arrests, or that he said he would n't tell what he said.

A year ago last spring, on my premises, Nathan Eyres spoke of him. I asked if prison had improved Phelps; he replied, he thought not; said he had been caught stealing, and lied about it. He alluded to Butterfield's wheat. Raymond also said he was not to be believed; that Phelps had said he was going to take charge of a factory; that he did n't believe the story; that factories were not so hard run as to give a jailbird twenty shillings a day. That was all he said.

Charles J. Stevenson, about two years ago, spoke of him. He said Phelps drew up a paper and swore to it, and that it was not true. His brother Hiram was sent to jail for trespass, and Phelps got up this paper, swore to it, and got him clear. Did not learn that this paper was a habeas corpus, but Stevenson said, on this paper Phelps got his brother released. Can not name any one else.

Adeline Metcalf — Know Phelps. Now live in the house occupied by him at Sylvan. Was there shortly before he left it. Was there the last of March; saw a bureau there; it stood in the north part of the room. The partition has been changed since he left: the bed place is now at the north side, and was formerly at the south side of the partition. The partition now extends clear across the room, formerly it did not. The bureau stood against the partition.

Cross-examined — There is no change in the outside walls; the window Cowdon did n't see through, never was there.

Mrs. Agnes Hocum, of Sylvan — Know Phelps; was at his house the last of March or first of April; the day he was packing up to leave. Can't say I saw a bureau, but saw one or more bureau drawers, as if not to be packed. Mrs. Phelps told me she was going to send her bureau to her father's, and the father afterwards said it was there.

Cross-examined — Did not hear any other members of the family speak of it.

Henry T. Dickinson, of Sharon — Has lived there fifteen years; know Phelps; first knew him in Sharon. Know his reputation, &c.; bad — would n't credit him under oath.

Cross-examined — By general reputation. Mean the opinion of people at Sharon and Sylvan, as far as I know. Heard Mr. Turner, at the time Clark's horses were stolen, say he believed Phelps stole them.

Mr. Coutch, about the first of March, at his house, at Sharon, spoke of a suit where he was a juror, and Phelps a witness, he also spoke of his general reputation for truth and veracity, and said it was bad.

Samuel Raymond said he thought he was a man who could n't be believed. Can't state when or where the conversation was, who was present, or how it arose, or who commenced it. Do n't know that I have heard any one else speak of his reputation.

When I impeached him on direct examination, I was confined to

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before the arrests. Heard little of him before the arrests, and would not impeach him before the arrests.

J. R. Sloat, of Sharon — Has lived there thirty years; knew Phelps when he lived there; have not known him since he left there; his reputation there was bad; would n't believe him under oath.

Cross-examined — Have not known Phelps for ten years past.

Henry Irving, of Sharon — Lived there three years; before that in New York. Have known Phelps since he came from prison; his reputation is bad; would n't believe him under oath.

Cross-examined — Have heard a great many say in the last two years in Sharon and Sylvan, that they would not believe him under oath. Do n't often go to Sylvan; was there last week.

Since he came from prison, and prior to the arrests, last summer, Judge Francisco said Phelps' character was bad; did n't say for truth and veracity; he was speaking of some horses that were taken; do n't know that he said he would n't believe him under oath. There has been a good deal said of him since the arrests. I made up my mind partly from what has been said since; do n't know that before the arrests I heard any one say they would n't believe him under oath, or speak of his truth and veracity.

Charles Dorr, of Sharon — Has lived there thirteen years; knew Phelps there; have seen him once since he came from prison. Knew his reputation in Sharon; it was bad; would n't believe him under oath.

Cross-examined — Made up my mind that his reputation was bad, about six years ago, and before he went to prison. At that time, heard Mr. Tyler speak of his reputation; can't remember any one else. Mrs. Bell, since he came from prison, and before the arrests, spoke of his truth; think this was in last April; can't tell what time in April; do n't know if it was early or towards the end of April; it was before the arrests; she said he was suspected of being in a gang of horse thieves; that is all she said. I think that touches his truth and veracity.

Do n't recollect any person else I heard speak of him in that period. I make up my opinion both on what I heard before and since the arrests. I presume Mrs. Bell, at the same conversation, spoke of his truth and veracity, but do n't remember what she said.

The witness is questioned further, but can name no informant within the period named.

Henry W. Rowe, of Sharon — Known Phelps for six or eight years. Lived within six miles of him when he was in Sylvan, and within three when in Sharon. His reputation is bad; would n't believe him, &c.

Cross-examined — Have lived fifteen years in Sharon. Have seen Phelps but once since he went to prison. Prior to the arrests, and since he came from prison, heard no person that I remember speak of him.

Hull Goodyear, of Sharon — Has lived there seven years; has known Phelps since 1841 or '42; lived four miles from him when he lived in Sharon. His reputation there is bad — would n't believe him under oath.

Cross-examined — Learned his reputation in 1841 or '42. I came to Sharon in 1840. In 1841 or '42, Phelps lived in the north part of Sharon, on his own farm. I have no doubt of this. He was then active in our township meetings, and his reputation was so bad he could n't get

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a nomination; he and I were of the same politics. I knew him till he went to prison. Since he came from prison, and before the arrests, have heard him spoken of — by Aaron Bell, at Manchester. Can't give the exact time, but within a year, and over three months ago; said he could n't be believed under any circumstances. Can't tell how we came to speak of him. Samuel Raymond, on the 1st Monday of April, at town meeting, spoke of him. I inquired about a rumor I had heard, about his taking some wheat, and Raymond said he had no doubt he took it; he also said he could n't be believed under any circumstances. Can't name any others in the period specified.

Mark Chase, of Detroit — On Thursday, I was in Howard's office, with him, Toms, and Seward. Toms brought in some camphene, and filled the centre hole in the match (now shown) and covered it with wax; asked me to watch it, I did, and observed that it was gradually receded in; in about two hours there was a hole in the wax. I put on fresh wax; after a little there came a hole in it also. To-day the camphene was poured out. There was only about a third of it left, and that was discolored, and pieces of the wax through it.

No cross-examination.

Heman Lake recalled.

Mr. Seward states he wishes to ask witness if he was at the door of the jail where Smith was confined last week — and if Smith asked him, "Do you know me?" and as to the conversation that ensued; showing that Lake then stated he never saw defendant Smith, and that he was not the man he alluded to in his testimony.

Mr. Van Arman objects to asking any questions, for the purpose of contradicting the witness as to what transpired subsequent to his examination.

Gov. Seward — As Mr. Van Arman expressed a desire to know our witnesses to this point, if the witness denies the conversation, which we hope he will not, we expect to prove it by Francisco and Coykendall. A witness discredits himself equally by his statements before and after his testimony is given — if he made an untrue statement, and discovers it afterwards, he not only should, but he is bound to correct it.

Mr. Hewitt — This witness spoke of a man named Smith. I, at the time, objected that he had not sufficiently identified the defendant Smith as the one.

Court — This is not the question; it is one thing to call a witness to show he was mistaken, or to show it by other testimony, and another to put questions for the purpose of contradicting him.

Mr. Fraser argued that the ground of impeachment by the contradiction, must exist before, and not arise subsequent to the giving of this testimony.

Court — It may not affect the question if you can show what passed by other witnesses, but you can not, for the purpose of contradiction, inquire what the witness stated or said subsequent to the giving of his testimony.

Mr. Stuart, prosecuting attorney, stated that it was reported to him that Mr. Lake had made a statement to the effect that he did not know Smith, and had so stated to Smith in jail, in the presence of the officers of the prison; that, anxious to open the door to any scrutiny, he had

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sent for Lake, and produced him, with the view of subjecting him to the inquiry; but it was now proposed to contradict Lake (if his answer should be in the negative) by other persons, not so well known to the prosecution. Under these circumstances, the counsel for the government feel it to be their duty to avoid any unnecessary multiplicity of issues, and therefore they decline to allow the witness to answer the question, and make statements of what he did say, although he is solicitous of so doing. Mr. Stuart further said that Lake did not, on his prior examination, identify the defendant Smith, but only spoke of a person called Smith, who was unknown to him.

John Coykendall, recalled.

Mr. Stuart states in reply to Mr. Fraser, that he wishes by this witness to prove, that last week at the jail, in conversation with defendant Smith, Lake admitted that he did not know Smith, and never saw him before.

Mr. Fraser objects, that such testimony is incompetent. It is not contradictory of any thing said by any witness; it is mere hearsay. It is an indirect way of contradicting Lake, when they are not allowed to ask him the question and contradict him directly. It would be different if they proposed to show contradictory statements made by him before he testified.

Mr. Seward argued the question at length; dwelt upon the peculiar position of Lake as being such as should not shield him from scrutiny. He did not believe that a single authority could be produced to show it was incompetent to show by the acts and statements of a witness immediately after he left the stand, that he was entirely unworthy of credit. Could it be law, that the witness should not be asked the question himself, and that his statements could not be otherwise shown, when these statements would show conclusively that he was unworthy of credit? Were prosecutions to be so conducted, when their only object should be to ascertain the truth? Are these defendants to be thus convicted? We shall see.

Mr. Fraser cites Russell, page 925.

Mr. Seward contends that the rule in Russell refers to matters anterior to the time you offer the proof; not anterior to the period where the witness testified.

Mr. Van Dyke — If it is for impeachment the testimony is offered, no foundation has been laid; if not for impeachment, can the unsworn statements made by a witness out of court be admitted. Lake is not a party to this suit, and clearly the unsworn statements of a stranger to a suit, cannot be given in evidence. In reply to the statements about Lake's peculiar position, he is not an informer, and although he was confined in the state prison, it was not for one of that class of offences that disgrace or render him infamous; his offence was merely aiding a friend to escape.

It would be highly dangerous to establish a precedent, admitting this testimony; for witnesses, to avoid discussion, or from other motives, may, in loose conversation, not under oath, vary a statement of their evidence.

Court — Here it is not so much a question of contradiction as identification. It tests the knowledge of the witness on a material point. I do n't see why such proof should not be received. The only question

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with me is, how the testimony should be given — whether Lake should be first asked the questions, or whether they can, in the first instance, show the conversation by other witnesses? Such are my present impressions, but I will reserve my decision until morning.

John Coykendall — Know Westcott; was at his eating house last fall; been there more than once.

Question — Did you ever have any conversation with O. D. Williams, in Westcott's presence, about giving the railroad hell, or throwing the cars off the track?

Answer — Never heard any conversation of the kind.

Remember the cars running off at Leoni, and a man jumped from the train, and broke his leg. This was in the day time, and I am pretty sure it was on an election or town-meeting day. It runs in my mind it was on an election day. The accident was in consequence of some repairing that was then going on, and the cars came sooner than they expected.

Cross-examined — This is the second time I have been on the stand; Heard the cars came sooner than they were expected. Did not see the accident happen, but was there shortly after. Have heard I was indicted at Niles, with these defendants, but do n't believe I am. Never heard such a conversation as the one above alluded to, but such conversation may have occurred in my house without my hearing it. Never, at my house, or in the town of Leoni, made threats against the railroad. Have heard it said it was wrong to kill cattle, and not pay for them, but heard no threats. The lawsuit was in September, 1850. Have been in Leoni two years. Keep public house there. Know all the defendants.

Michael Coy, recalled — Question — Do you know the handwriting of Willard Champlin? I think I do; have seen him write; saw him write his name. Was to school with him, and saw a good deal of his writing.

Witness here examined the "Price Boy's Warning," and says: — the "W" is different. Should hardly think that that is his writing. That is my best opinion.

Cross-examined — Have been in the court some minutes; do n't know as I have seen this paper before. Saw a paper in the witness room. It was shown me a few minutes ago by Mr. Seward. It was Willard's writing; no one pointed out the difference in the 'W' to me. I heard Holmes was a witness; did not hear he said his 'W' was different. Mr. Frink also asked me if I knew Willard's writing. Do n't remember of any one speaking to me about the 'W.' Do n't know but I have been told the 'W' was different; Do n't think he writes so much of a running hand as this; he writes a nicer hand. It do n't look exactly like his writing. Saw him write last winter; that which Gov. Seward showed me, looked like his; it was larger writing than this. I do n't hardly think this looks like his handwriting.

Witness examines another paper shown him, and says: This do n't exactly look like his writing, either.

James Champlin — Knows Willard Champlin's writing; he is my brother. Have seen him write. This ("The Price Boy's Warning") is not his writing.

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My father last spring went to work at summer-fallow, and Lyman with him, on his own fallow. The fallow is south-west of the house. Do n't remember of their going from home to work.

Cross-examined — It do n't look like my brother's writing. It differs in the spelling; he spells his name "Champlin," also he writes his name "William;" his letters are larger than in this. Witness examines another paper, and says it does not look like his either. I can write a little, and read writing some.

Witness is here handed a piece of writing, and asked to read it. After a pause, not proceeding to read, he is desired to leave the stand.

Darius Davis — Was not at Coykendall's the day of the Burnett suit; was there the day of the theatrical performance. Saw Fitch at the performance; he came in between seven and eight. The performance was over between eleven and twelve, and I saw Fitch after it was over. I was door-keeper. The performance had not commenced when he went in.

Cross-examined — During the afternoon I was at work at the mill. Saw Fitch crossing the street in the afternoon. They had the performances often; not sure they had them every week. Did not see Fitch at them often, but saw him at another, either before or after this one. Do not know if there was a lawsuit that day. The night I saw Fitch was the 13th of September. The play was "Perfection," and also the "Secret, or Hole in the Wall." Perfection, or the Secret, is the name of the first play. I believe Perfection and the Secret were the two plays. I believe Perfection, or the Secret, is the full name of one play. I do n't know if I can recollect the name of the second play. I recollect Fitch was there, and the play. Do n't know that Perfection was played but the once. Perfection and the Secret are different plays. I am no actor myself. can't tell the leading characters in either play; both plays were played the same night — Perfection first. I do n't know but a lame woman gets up and dances in the play. Do n't know if Hole in the Wall was played. I know by the record, that Perfection was played that night, and I know Fitch was there the night it was played. I looked at the record; no one asked me to look at it. I looked at it because I wanted to. Mr. Jackson and several others had it looking at it. Secord and Dimick were there, and I looked at it to see what play was performed the 13th of September; do n't know what they were looking at it for. I recollected, beside, what play was played that night, but looked at the record to satisfy myself. It is about ten days since I looked at the record, after Secord was examined. It was not with a view to this case that I looked at the record.

To Seward — Do n't know if they had a prompter there.

Mr. Stuart — You know a prompter is the man who leads the music?

B. Dimick recalled — I know Secord. Last spring he and I worked in the distillery, near Leoni. A few days after town meeting, he came down to the distillery as usual, and after a while he went south; he said he was going south to get a beetle and wedge. It was about ten A. M. that he went, and was absent a half or three quarters of an hour. After he returned, he went on to the road west of the distillery, and then turned on the road north towards Leoni. The road comes into the village a little east of Coykendall's.

Cross-examined — I live in Leoni. Have lived there three years

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before that; lived about seven years at Michigan Centre. I know most of these defendants. Secord and I never spoke of what I have testified to. I saw him the day before yesterday. The day I alluded to, was three to five days after town meeting. He started about ten A. M. Where he said the beetle and wedge were was three quarters of a mile south; going there he would cross a road that runs east and west. It was a regular business with him to help me mash, and we generally began to mash about eight, and took generally one and a half hours. This is the way I fixed the hour he left. He returned in three-fourths of an hour. He did not bring the beetle and wedge with him; he said he could not find them — when he left the second time I noticed him till he got on the road; do not know where he then went. I read his testimony in the papers. The next day after the beetle and wedge. I do n't know what time I saw him; can't recollect any peculiar circumstances the prior day. This day I watched him till he got on the road, about thirty rods from the distillery. Did not watch but saw him when he got to the road. Have seen Secord since he was sworn; he told me he was sworn, but did not tell me what he swore to.

Mr. Frink asked me what I knew. I also spoke to Capt. Fitch about what I knew.

Ebenezer Taylor, of Leoni — Live about eighty rods from the village; on the 11th of April last was at home part of the time, and about seven or eight P. M., started to go to Mr. Waldron's, two miles south, to get a boy; did not get him; returned by Penfield's saw-mill; know where N. and D. Stevens live on that road; about forty or fifty rods west of Stevens, I met a man who was going west; he had a small bundle tied up in a red kerchief under his arm; went right home, and when I got home it was eleven o'clock perhaps; from where I met him to home, took a quarter of an hour; he was a middle-aged man, rather tall, with dark or black clothes; the road I was on led by the saw-mill to Michigan Centre; where I met him was about half a mile west of the Napoleon road to Leoni, and about half a mile east of the saw-mill; did not know the man I met.

Cross-examined — Lived in Leoni for twelve years last May; before that, lived in Ontario county, New York; moved to Leoni from New York. Am a farmer. Was subpœnaed at Leoni, this morning. About an hour before I started, I first knew I was to be a witness; did not expect to be a witness before then; yesterday, or the day before, young Emmett Beeman came where I was plowing, and we talked some about plowing, and just before he left I asked how the trial came on, and I dropped a word about seeing a man, and suppose he told them; he did not say anything about his seeing a man; said I saw a man with a bundle, and it must be the same man; we had spoken of it before; did not now say that I said to him "same" man; only said I saw a man; did not say to Beeman, the "same" man, nor did I say here I did; think it was the same week that defendants were arrested, that I before spoke to young Beeman about my seeing the man; it was at Theodore Quick's; went over to Quick's, and saw Beeman and Zeikle's boy there. Secord was n't there; have seen Secord often; can't say when I saw him to talk with him; never spoke to him about seeing this man; do n't think he ever mentioned before me, seeing him at Quick's; do n't recollect the

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words used by us; mentioned to Beeman my seeing a man with a bundle; told him I met a man with a bundle, forty or fifty rods west of Stevens'; can't recollect if I then told Beeman that he had a bundle; did n't say he had a bundle, or that there was a red kerchief on it; do n't know if I told him more than that I met a man; think I was asking him if he met such a man with a bundle; told him he was a tallish man, with a bundle; think I also told him there was a red kerchief round the bundle. It was on the 11th I met the man; know it, because there was a lawsuit of my brother's on that day, at Leoni. Started for Waldron's afoot, between six and seven o'clock; first went to Waldron's, two and a half miles or so; stayed there about an hour; from there round the saw-mill, to where I met the man, was about two miles. I stopped a little at the saw-mill before I met him; he had a cap — think, glazed; no overcoat; he was walking slow; passed within three feet of him; we passed each other on the road; there was no attempt at concealing the bundle; it was in a kerchief, and can't say if it was a bundle or a box; it was a kind of square; as I met him, he kind of crowded up toward me, and changed the bundle from the side next me to the other side; he was a tall, slim man; never saw him since; have never been told who he probably was; do n't think I was ever told it was probably Lake, because I never mentioned it till I mentioned it to Beeman; on that occasion, young Emmett Beeman told me he did n't know he had seen the man. I have not spoken to any one about this matter, since I came to town; when Cozier subpœnaed me, he asked me if I had met a man: told him first I had not; then he subpœnaed me, and I told him I had seen one. Have seen Mr. Delemater to-day; on the cars, think I told him about my seeing the man; did not tell him what I knew; told him I met a man, not "that man;" never spoke with any one about it, but Emmett, Delemater, and Cozier.

Saw Bennett a week ago, spoke to him of the trial, but did not tell him what I knew. Have not been at Beeman's house for a year, nor spoken to his son, save at the times I have mentioned.

On the 11th met a boy; do n't know that I met any other but Lake; met Lake about half a mile from Beeman's; had no suspicion or reason to watch him.

The Stevens' live on the east or west road; know his family and him; know his daughter; had no conversation with her or any of Stevens' family about this matter.

About an hour before I started, was subpœnaed. Read the Jackson paper, which gives this trial; read Phelp's and Lake's testimony; did not read Secord's; think in the proceedings, I read about Lake going across with a bundle. Have seen his name often; understood he was charged with having taken the bundle to the Centre; when I met Lake, was about one and a half miles from Leoni; met no person but Lake and the little boy; from the saw-mill to where I met him, I kept on the road, after I passed him I struck across lots to my house; saw the man only a little way before I met him; after we passed, I looked back and saw him still on the road, not over fifteen or twenty rods. Think the kerchief was tied, as I saw an end hang down; not positive it was tied, or figured, or if silk or cotton. It was a warm morning; noticed no sign of sickness or weakness about him; he was walking along at a pretty good

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jog; do n't know if he had whiskers; never saw him before or since; have never seen Lake; he has never been described to me; do n't know that I ever was told Lake was a tall man; told Cozier the kind of a man I saw, but he said nothing; have not been at the Centre since July; never saw young Beeman but twice; the second time he did not tell me he had seen the man; did not say how he told me the first time, that he had n't seen him; he did n't tell me so, he only said he did n't recollect seeing him.

To Stuart — It runs in my mind it was the last of the week, I saw the man; know it was the 11th, as my brother subpœnaed me on that day; have not looked at the subpœna since that day; took breakfast at home that day; soon after breakfast went south to Waldron's, to see if I could hire a boy. Live south-east from Leoni; from my house to Waldron's I went across Beeman's lot to the north and south road, from which I struck about fifteen rods south of the bridge, and nearly opposite the distillery, north of the road Stevens lives on; did not go but came back by Stevens'; went two miles south, then half a mile east to Waldron's; can't tell what time I got to Waldron's; got there eight or nine o'clock; it was after sunrise when I left home; did nothing after breakfast; but think I sat round a little before I started from my house; stayed at Waldron's about half an hour; he was not at home; saw his wife and a girl there; went to hire a boy; she said he was going to break up, and could n't hire; know I met no one on the way to Waldron's; from there I went to Penfield's mill; crossed the north and south road going to the mill, but did n't travel on it; met no one on my way to mill; saw no one at the mill; it was not running; did not go into the mill; was going to Zeikle's, to try to get his boy; did n't go to Zeikle's, as I met William Ladue, and he told me Zeikle was not at home.

The further cross-examination is postponed.

Mr. Seward introduced a record of the entry of a nolle prosequi, in the Indictment *vs.* Lester; it is admitted to be authentic.

The court adjourned to Monday morning, at eight A. M.

Morning Session 53d Day.

Monday, August 11th.

Ebenezer Taylor, (cross-examination continued) — Have read the daily paper to-day, read the first part of my testimony; not much of it. Coykendall was present, but can't say he was with me. Have not talked to any person about my testimony since I was on the stand.

I was near Zeikle's, but did not go there, as Ladue told me, at the saw-mill, Zeikle was not at home. The saw-mill is a quarter of a mile from Zeikle's, and a mile and a half from Waldron's. I think it was after eight when I was at the saw-mill; can't say, but think it was after nine; can't stay if it was after ten. Stayed half an hour or more at Waldron's. I talked some time with Ladue, can't say how long. Spoke about lumber, and some rails he was to split for me, and for which he was paid. The saw-mill was out of repair at that time. I understood from Ladue that he understood saw-mills some. Do n't know that he did not attend them till after the arrests. At the time of this talk

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Penfield was down here under arrest. I think I am mistaken in this, and that it was not here Penfield was, but he was away somewhere. I think it was before the arrests I saw the man; that day, I think, Ladue said he had sawed some. Am sure I asked him who attended the saw-mill. I asked him if he attended the saw-mill; do n't recollect what reply he made. He did n't say he would saw some for me. Think he did not give me some encouragement that he would saw some for me. I do n't know that at this time, he was tending the mill; never saw him tending it. Do n't know he attended it after Penfield came away; never was there but on the 11th. I told Ladue I was going to Zeikle's, to hire a boy; and he said I would not find Zeikle at home. I left him, and came on home, by Zeikle's and Stevens'. The road turns just before it gets to Zeikle's. I did not stop at, or see Zeikle, or the boy; left no message at Zeikle's. I thought I should see him, as I often saw him; I had not seen him for a spell before. I was in no great hurry about a boy. Never after went to Zeikle's; did not get his boy. Think I saw him that day at Leoni, at Jackson's store. I was at the store at noon that day. I merely spoke to Zeikle about the boy, and I think he said he had promised him to Ladue. Am not positive it was Ladue, but some one. Did not stop on the road after I left Ladue. On the way I met the man, and, I think, but am not certain, that I also met a small boy. met no one else. Can't tell when or where I met the boy, it was after I met the man; think it was Gardener's boy, six or seven years old. Perhaps a mile and a half from Gardener's; it was on the cross-road I met the boy, and perhaps a quarter of a mile from where I met the man Stevens' is half a mile from the corners, and I met the boy nearer the corners than Stevens', perhaps twenty rods from the corners. Can't say how long I talked with Ladue. I talked half an hour with Ladue. I passed a couple of rods from Stevens', and six or ten rods from Zeikle's. I went round there for the purpose of seeing Zeikle; had no other business round there. Ladue lives near the saw-mill. I have since spoken to Ladue about the lumber, at Leoni. Did not stop anywhere after I left Ladue, till I got to Leoni. I met the man a few rods west of the creek bridge, on the east and west road; the bridge is over half a mile from the corners. I did not speak to him; passed about three feet from him; neither spoke nor passed any salutation. I looked back once or twice, and he was looking back at me. Do not recollect, but think his hair was darkish; think it was not very light; it was not red. Can't tell if he had whiskers or not; he was light complexioned; I did not notice his hair; am not sure, but think he had no spectacles; he was a middle-aged man, between thirty and forty. I did n't go home through the village; did n't go to the village till after I went home. I passed on his right side; he passed on my left side. My right hand was next him as I passed. The bundle was under his right arm, and he changed it to the left. After he changed it, I passed over, so that the bundle was next me as I passed by him.

I did n't ask Ladue where Penfield was; he did not tell me he was in Detroit. It was in my mind that he was framing a barn somewhere.

It was forty or fifty rods west of Stevens' I met the man with the bundle. Waldriff, not Waldron, is the person I went to see.

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Henry Phelps recalled, and Mr. Frink proposes to put the following questions to him:

1st. Do you know H. Foster?

2d. In the winter of 1849, in the upper shop of Finney and Conibel's, in the state prison, did you say to Foster, "Do you know that man?" pointing to Mr. Fitch, and did he reply, he was not much acquainted with him; and did you say, "If you knew him as well as I do, you would not think much of him; he was the means of your being there; that you would have revenge or satisfaction?"

Mr. Van Dyke submits, that it is now time to stop the accumulation of new issues: this witness has been on the stand four or five times, has before been recalled to lay the ground for impeachment, and, unless some limit is put to such a course, the trial will never end.

Mr. Frink — It is not a new issue; it is to show that what he swore in general terms, is not true. He swore he had no animosity to Fitch; we now wish to show, by a particular instance, that he had; we had no knowledge of this instance until last Saturday. If we had pursued the course of the prosecution, and requested to postpone the cross-examination until we inquired and ascertained these facts, this course would not be necessary.

Court — I will allow the questions, but give notice that I will not again allow witnesses to be recalled for such purposes. The case has now continued three months, and it may be presumed parties are informed of their entire case.

Witness replies to the first question. I do know Foster, if he was Bube's foreman.

To the second, he replies, "I remember no conversation with Foster in that shop, nor in the town shop. Do n't now remember having any conversation with Foster that winter. Do n't now remember seeing Fitch at all at the jail that winter. I may have conversed with Foster, but, if so, do n't recollect it. If you state what I was doing, or anything to refresh my mind, I may recall the conversation I had with him, if I had any."

W. T. Foster.

Mr. Frink proposes to ask this witness the questions put to Phelps.

Mr. Fraser objects. The questions in that form are leading, and time and circumstances have not been laid with sufficient certainty.

Mr. Seward argues in reply, and cites 2 Russell on Crimes, 936.

Mr. Fraser — The authority is only on the point of the witness' not having denied the conversation, but only saying he could not remember it. I was aware there are conflicting authorities on that point, and therefore placed my objection on different grounds. Time has not been fixed, and the questions are leading; the question should be, what passed. 1 Phillip's Evidence, 271; 1 Starkie's Evidence, 606.

Mr. Seward — The objection, on the ground that the question is leading, is against the prior rulings in this case. He alludes to the course pursued by the opposing counsel, in directing the witnesses to retire during this discussion, as unusual, and contends that the rule does not require that the exact time, place, and person should be given with any further particulars than is sufficient to fairly draw his mind to the conversation referred to. Cites 2 Russell, on Crime, p.p. 932, 937,

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note. We have given the person, the place, and, in addition, the fact that Fitch was there. There has not been, in the course of the trial, a more definite direction of the mind of the witness to the particular conversation.

Court — In respect to the question, I think it may be put in the same form to both witnesses, in order to bring their minds to the same point. In respect to the time, I do not think the rule requires exact precision. It varies according to the habits of intercourse between the parties — to fix a period within six weeks, would be insufficient, if the parties were in the habit of daily intercourse; but, if their intercourse was rare, the time might be sufficiently certain. I think the grounds for contradiction have been sufficiently laid as to time and place.

Mr. Van Dyke — In reference to a suggestion thrown out by the court, the true rule is, that if the witness says he "do n't remember," that shall not shield him, if it appears, or there is even a fair suspicion, that he desires to avoid, or feigns to forget; but if the witness appears to make an honest effort to remember, and fails to recollect for want of sufficient certainty of time and place, he can not be contradicted.—7 C. & P., 701; 9 C. & P., 619. Phelps made an honest effort to remember, and even asked them to give further particulars to refresh his memory.

Mr. Seward — To decide by the manner of the witness, would be to refer it to the discretion of the court, which is certainly not the rule. The rule is, if the witness admits the conversation, that is, if he denies or says he do n't remember, he may be contradicted. Phelps effectually denied the conversation — the mere putting in of the words "do n't remember," does not lessen the force of his denial.

Court — If a witness says he do n't remember a conversation that passed over two years ago, it does not follow that that is a denial of the conversation; it requires something more than a mere failure to recollect, it must in some way come nearer to a denial. Yet, perhaps, in this case, it is the safest course to admit the testimony, and I will receive it, as the authorities appear to conflict.

Witness Foster — In reply to the second question put to Phelps, says he, (Phelps,) did say so.

Cross-examined — It was in February or March, in the shop mentioned. I fix the date, as the keeper was changed about the first of May, and I recollect Fitch being there two or three months before; and I never saw Fitch there but once again, a few weeks before the arrests. Think I did not see Fitch there but once that winter. Think it was in the forenoon. Fitch was, at the time, speaking to Palmer, in the shop. When I came into the shop, Fitch was sitting at the desk with Palmer. Do n't know where Phelps was when I came in. Phelps was standing in the shop; came and asked if I was acquainted with Fitch; I said not much. We spoke near the head of the stairs; no one else in our presence or hearing. Phelps said, if I knew Fitch as well as he did, I would n't think much of him, "for he is the means of my being here, and I will have revenge or satisfaction in the case." That is the substance of what he said. He said, "I 'll have revenge or satisfaction." He used both words. He made a motion to the keeper, and had his assent to speak. I know he had assent from the keeper to speak to me. Am positive he made a motion to the keeper for permission. I say so from

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the usual habit. I did not see the keeper give him permission; do n't know that he gave him permission. Saw him raise his hand to the keeper, he made the motion either with his hand or head. Am positive he asked the assent by a motion; can not say what kind of motion, or whether with his hands or head. Am positive he asked the assent by a a motion; can not say what kind of motion, or whether with his hand or head; am certain he used the words revenge or satisfaction. The conversation lasted about two minutes. Phelps had access at that time to the entire yard. I recollect nothing else he said; think there was nothing else said; I was in a hurry, and went on. Think, at this time he did chores, and was round the yard; if he met me in the yard, he might speak without permission, but not in the shop.

I first mentioned this matter to Mr. Bube, about the commencement of this trial, in the street in Jackson; he was speaking of his brother having to come down as a witness, and I told him what I heard Phelps say. From the time I heard it till then I never mentioned it; made no memorandum of it. After I came here in the witness-room, I told them what Phelps said, and they made memorandum of it. I spoke with Delemater about it, and he told me if I came down on Saturday I would get through that day. They had more fixed up for me than I ever heard or could remember. At seven or eight this morning I spoke to Mr. Merrick, but did n't tell him what I would swear to. Have not gone over the matter since I came here, save on Saturday. I restated it to-day to Mr. Frink. Some of the counsel were in the witness-room while I was off the stand, but did not tell me how the matter stood. On the day alluded to, I may have had conversation with Palmer, but do n't remember—do n't remember if I spoke to him the next day. Did not see Phelps carry anything up to the stoop that day, but have seen him about that time carry things, nibs and water, to that shop. They were finishing forks, &c., that day in the shop; think the cloth fixtures had been removed.

H. R. Andrews recalled.

Mr. Fraser objects, and asks how often the defence will be allowed to recall witnesses.

Mr. Seward refers to the prosecution having recalled Phelps and Clark, to facts existing at the time they were first on the stand. Andrews is now called to prove the result of an experiment made since he was on the stand.

The Court will admit it this time.

Witness — I saw the match and box now produced, on Friday; the match was put in a box with shavings and camphene, and set fire to, and a board was put over the box, and the fire went out. The experiment was tried four times, the fourth time it continued to burn, and I put it out with water. Do n't think at either time the fire melted the wax which confined camphene in one hole of the match. It was a rough board that was put over the box.

Cross-examined — This is all I know about this case.

Mr. Frink introduces the record of the Jackson county court, and reads there a nolle prosequi, entered in the People *vs.* Fester, for obstructing the railroad cars; the date of the entry being the 11th February, 1850.

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John Coykendall recalled, to be examined as to the matter relative to the admission of Lake, referred to on Saturday.

Mr. Fraser says, as he made objection to the examination of Lake, he has since examined the points involved, and is satisfied that the testimony can only be introduced as impeaching testimony — 38 Eng. Com. Law, 193; 1 Phillip's Evidence, 293; 1 Starkie, 144.

His position is, that before the testimony of Lake's declaration can be given, Lake must be first inquired of as to them; if Lake shall be allowed to be called for the purpose, is addressed purely to the discretion of the court.

Mr. Van Dyke begs to cite the following case as directly in point — 19 Wend. 440.

Mr. Seward is of opinion that the rule, as stated by the counsel, is correct. It was always his opinion that Lake should be interrogated in the first instance, and argues that this is a case where the court will exercise its discretion to allow the witness Lake to be recalled.

Mr. Van Dyke refers to the length of this case; the number of witnesses, and the peculiar danger of using the discretion of the court as asked; the opportunities offered to dog witnesses after they have left the court; the fact of the number of witnesses who have been called and recalled as to matters transpiring after witnesses have been examined, and hopes the court will not allow the witness to be recalled.

Court — In review of the rule and principle which seem to govern this point, I deem it safest and best to admit the witness Lake to be recalled.

Dr. E. G. Desnoyers — Is a chemist and druggist. Am acquainted with drugs; camphene is pure, re-distilled turpentine; camphene is a very powerful solvent; it would dissolve varnish; it would dissolve sealing wax rapidly, and shoemaker's slowly; it would penetrate wood rapidly, unless the wood was prepared; as water would remain in the unseasoned wood, it would penetrate it more rapidly when seasoned; it will not mingle with water. It needs air to burn; with slight draft it burns with a good deal of smoke; camphene lamps are made generally with a very perfect draft, and their chimneys have a bulge, that increases the draft and makes it more perfect. Camphene itself will not explode, but camphene vapor will. Spirit gas contains alcohol and camphene; about four ounces to one quart — that is, about one-eighth camphene.

No cross-examination.

Mr. Van Dyke asks of the defendants counsel, if Mr. Dyer is here for cross-examination?

Mr. Frink — He is not.

Mr. Van Dyke — Then we move that his testimony be stricken out, and withdrawn from the jury.

Mr. Frink — We will not oppose the motion. Dyer went to Indiana after another witness, and as he has not returned, the motion must prevail.

Mr. Seward concurs with Mr. Frink, and the testimony is stricken out.

Mr. Van Dyke moves to restore the testimony of Chadwick, Loud, and Benedict, which was stricken out, subject to restoration, if the final ruling of the court should be as it since has been.

Mr. Seward assents that all the testimony which stood in the position

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stated, should be restored, subject to his general exception to the ruling under which it became receivable.

The witness Lake not being in court, the prosecution, in order to save time, consents that the defence may examine the witnesses by whom they intend to show the statements alluded to, with the understanding that, when Lake comes, he also shall be examined.

John Coykendall — A week ago, last Wednesday or Thursday, I saw Lake at the jail. I heard a conversation between him and that man, (defendant Smith;) was up stairs, and Lake came up with two ladies; he went towards the door where I stood; Smith was inside the grates, Lake outside in the hall; there was some conversation there; Smith asked Lake if he knew him, and Lake said, I do n't know as I know you; that was all I heard; there was some coffee spilt, and I drew back, and heard no more.

Cross-examined — Did not hear Lake say, I never swore I knew you; he may have said that — there was something said about a ball alley, do n't know what.

Mr. Seward says, that he expects another witness, a lady from the country, to an important point in the case, the cars have been delayed, but she may still come; there are also two other witnesses to the same effect as the last; he may hereafter apply to the discretion of the court to receive their testimony.

Mr. Van Dyke — We wish the counsel for defendants to state distinctly, whether they now close or not.

Mr. Seward — With the remarks I have made we now close our case, with the notice that we may ask the court hereafter to receive the testimony of the witnesses alluded to.

Mr. Van Dyke, understands that the defendants have closed; the question of receiving the testimony after they have closed, does not arise at present.

Mr. Stewart states, that there is a prisoner in court who was a witness, and desires to be brought upon the stand in reference to his testimony.

Mr. Seward supposes he has a right to be brought on the stand if it is his own wish.

After some further discussion, the sheriff states to the court that the witness alluded to (Hawley) expressed a wish to him, some ten days since that he might be brought before the court.

The sheriff is directed, if the witness desires it, to have him before the court at two P. M.

Court adjourned to two P. M.

AUGUST 11, 2 P. M.

Herman Lake, recalled by defence; was at the jail, about a week ago, with Mrs. Pierce and Ganong; the former lives in this city, the latter in Dearborn; defendant Smith asked me if I knew him; replied, did n't know as I did.

To Mr. Van Arman — Went with the two ladies who wanted to see the prison; went up stairs, and Smith asked me if I knew him; said I did n't know as I did; he then asked me if he was the man I

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saw at the Palo Alto saloon, and before I had time to reply, some one spilled a cup of coffee over me and one of the ladies, and that broke up the conversation; no more was said between us.

John Hawley here appeared, pursuant to the request made by him to the court through the sheriff. The court asks if he wishes to make any explanation; he replies he does, and states to the jury:

When on the stand before, I stated what was not true in reference to seeing Phelps; to my knowledge I first saw Phelps to know him at the foot of the court house steps, during the trial; saw a man shake hands with him and call him Phelps; it was thus I knew him: a man stood by me, to whom I said, "that's Phelps isn't it;" he replied it was.

Mr. Latty was the first who spoke to me about the matter; I was plowing, and he came alone to me; this was on a Saturday; he came to me again the following Wednesday. Mr. Billings came to the end of the lane with him; Latty came to me and brought me down to Billings; on the way here, Billings told me he was a preacher. Latty told me they wanted to prove that Phelps burned the depot. Billings gave me ten dollars before we started for here, and said I should be amply rewarded; he said I should have two dollars per day and be found; he said I should be amply rewarded for coming; do n't know if he meant in addition to the two dollars per day. The way I found the time Phelps went to Ackerson's was, I heard persons speak of it, and Burnam, who has been here, told me it was the 15th that Merwin was arrested.

Billings came to me the Friday after I first saw him; he did not see me there, and came the Saturday, the Monday, and the Tuesday following, and also the Wednesday, and on that day I came with him; he said Dyer, Miss Merwin, Bernam, Curts and Kinmel were coming, and I must come; he said he lived in Detroit; he also said he owned a farm. Billings came all the way to Detroit with me; we came in a horse and buggy to Hocum's; there he left his horse and buggy, and got another buggy and Hocum's horse, and came in it to near Jackson; came a little way on foot to Jackson, and in the cars from there. Billings paid all expenses; I paid the man on the cars; but Billings paid the amount to me.

Since I was arrested, they said they would bail and protect me; they said Fitch would bail me; this was before I saw the prosecuting attorney; I made the disclosure to the prosecuting attorney voluntarily, as I felt I had done what was wrong.

I never had any conversation, of any character, with Phelps before I was sworn; saw him since at the jail. I sent for him.

I saw Dyer who was sworn; saw him in Indiana, and he was there called Dyer.

Gov. Seward — We move to strike out the witness' original testimony.

Van Arman objects to its being stricken out.

The Court — Does not see how it can be stricken out, but the question can be disposed of hereafter.

Here the case for the defence closed, and the prosecution proceeded with their rebutting testimony.

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REBUTTING TESTIMONY FOR THE PROSECUTION.

The defence having closed, the prosecution proceeds with rebutting testimony.

Darius Pierce — I reside in Lima, Washtenaw county, next to Sylvan. Know Phelps; have known him about ten years; save while in prison he lived about eight miles from me. Have been considerably acquainted with him; know his reputation prior to the arrests; it was said to be good as common; I never heard it questioned; from his reputation, I would believe him under oath.

Cross-examined — He lived in Sharon and Sylvan; first knew him before he went to prison; at that time heard nothing said of his reputation for truth; my acquaintance extended to the centre of Sylvan, where I often met him on justice business, and also had some pecuniary dealing with him; speak of his reputation from ten years ago up to the time of the arrests, and in Sharon and a good part of Sylvan. Never heard a question raised about his truth; do n't know that I ever heard his character for truth discussed while he was in prison. Since the arrests, I have heard his character for truth discussed. Have heard some talk and dispute about it; what I have heard has been limited to certain individuals. Have not been on the Metcalf premises, I think, in several months. Some time ago, I took a job on the $20,000 appropriation, and worked with a gang near there; this may be ten or fifteen years ago. Am more acquainted with the people than the premises; save to cross the territorial road, and perhaps once to get a few loads of lime, can't say I have, in three years, been at the Metcalf premises. When I went for the lime, I was at his father and brother-in-law's, and saw them also; saw a man named Lemn, old Snow and his lady, and others; there was no discussion then of Phelps' character; none at the time I passed over the road.

To Van Arman — Sylvan Centre is about five miles from me; that is where persons from Metcalf's premises generally do their business. I know the people in that village, and the people from about Metcalf's premises generally; know the people from Sylvan as well as in my own town; have been to the legislature; have met Phelps in lawsuits, and have seen him sworn; think I saw him sworn this spring before Crowell. During the last two years, have frequently met persons from round Metcalf's premises.

Are there a set of persons who have been busy about Phelps since the arrests? Have Fenn and Lappin been so busy?

The questions objected to, and withdrawn.

To Seward — The times I met him in suits, save the one before Crowell, were before he went to prison.

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Orman Clark — Know Phelps; went with him last year to Indiana. What was the business on which you went?

Objected to by Seward.

Van Arman — His going to Indiana, has been often assigned, by the witnesses who impeached him, as a part of the grounds of their bad opinion; it is also said that Clark suspected him of stealing his horses; we will show, by his conduct, he did not; we also wish to contradict the testimony of Hawley, who said he saw him in a certain place in Indiana, at a certain time.

Mr. Seward —In impeaching, the defendants were confined to the usual questions; in supporting his credit, the prosecution should be confined to the same questions; all said in reference to Indiana, was drawn out on cross-examination; we were not allowed to draw it out, and it follows they can not rebut it.

Mr. Van Arman — When the witnesses impeach, and then, on cross-examination, give their informants, does the counsel contend we are bound by that? That by cross-examination, we make the witnesses our own? The witnesses assigned journey to Indiana, as a part of the basis of their opinion; can we not explain away that basis?

Mr. Seward argues, that the effect of the matters drawn out on cross-examination of an inpeaching witness is, if it shows that the opinion has been formed on an improper basis, it is so much subtracted from the weight of the impeachment. In reference to the point, that the witness stated he was in Indiana, it is immaterial in the case, and they might have it struck out, but if it stands it can not be contradicted.

Mr. Fraser — Hawley's testimony is still on the minutes of the court; that Phelps said he went to get a man to burn the depot, and proposed to him, on a certain day, to do it; now we seek to show that the interview did not take place at the time stated; the testimony has gone to the jury, and so has the recantation of it; but we do not please to rely on that alone.

Nearly one half the witnesses who impeach Phelps, base their opinion in part, on his trip to Indiana, and is it not competent to remove that basis, and show that so far their opinions are unfounded?

Mr. Seward — The testimony is now put on the ground of contradicting Hawley, not by showing the conversation different, nor by proving that Phelps was not there at the time stated, but by showing the business that took Phelps to Indiana.

The court, after hearing the arguments, is of opinion the testimony is not admissible with reference to the impeaching testimony, but as, if he is impeached, there is no testimony to show his business to Indiana, save that by Hawley, I think the testimony admissible.

Mr. Seward wishes to note an exception, and as the decision is in reference to Hawley's testimony, he wishes it noted that he moved to have Hawley's testimony stricken from the case, and the prosecution opposed its being stricken out.

Witness — Phelps and I went to Indiana for the purpose of looking for horses stolen from me; we were gone about two weeks; we left this state in the fore part of September. I started from home on a Saturday night; on that night I stayed at Phelps', Sunday night at my brother's, near Jonesville, and we stayed Monday night at Angola; on

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Tuesday night, eleven miles from Fort Wayne, (Huntersburgh,) Wednesday night at Brown's tavern, twenty-five miles north of Fort Wayne, Thursday night at Kimmel's tavern, in Lagrange county, they call it Wright's corners; up to our arrival there, Phelps had not left me at all.

I never saw Hawley, we did not go a direct route to look for the horses; we stayed Thursday, Friday, and Saturday nights at Kimmel's; Merwin was arrested on that Sunday, I think — on Friday Phelps was gone an hour or two; he went with Mrs. Merwin in a buggy and two gray horses; Friday night he slept with me at Kimmel's; he was there both evenings, from sundown to dark; Thursday he was with me all day; on Saturday Phelps and I went Merwin's; he and Merwin were gone nearly all day, and I returned about sundown; I never was at Latty's; they said they were going to Latty's; they went in a buggy and two horses, the same I drove out there; on Saturday night Phelps and I slept together; on Thursday, Friday, or Saturday, Phelps could not have been ten miles south between sundown and dark. Phelps and I were together on Sunday night; I think on Sunday morning Phelps slept later than I did; he was not up from two to sunrise; during the time he was there, I have no recollection of his riding a bay horse at all; while there he wore a glazed cap and dark overcoat. On Monday he and I parted in the morning, and I did not see him till the following Thursday; that night I met him at Wright's corners, and we started home. I left a horse and buggy with him when I left him; a gray horse; was there with Phelps till after Merwin was arrested; had no knowledge of his having any design to steal. I hired him to go there with me.

Did you tell Mr. Drew that you suspected Phelps stole your horses?

Objected to.

Court — Drew, (an impeaching witness,) stated so, but as it was immaterial, and not proper ground to form an opinion as to truth, the testimony can not be received. The testimony of Drew, on the point, being immaterial and irrelevant.

Witness — I never found my horses.

Did you ever charge or suspect Phelps with stealing them?

Objected to.

Witness — I am acquainted with the people in the neighborhood of Phelps' residence.

A discussion here arose as to whether the witness might be asked as to Phelps' reputation in other places than the neighborhood where he lives. During which, Mr. Van Arman referred to the agreement between counsel on the commencement of the impeachment of Phelps, on July 8th, and urged, that by it, it was agreed to throw the door open, as to Phelps' reputation, without reference to the usual rules.

Mr. Seward replied, commenting on the agreement.

Court is distinct in the impression, that, not more than half the impeaching witnesses for the defence, were confined, by the question, to the neighborhood where Phelps lived. The true rule is, that the witness should live in the neighborhood, or associate with persons in the neighborhood where the witness sought to be impeached, resided, unless waived by agreement.

Mr. Van Arman refers to the testimony of Hill, July 18th, P. M., as

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an illustration of how the counsel acted under the agreement; Hill did not even profess to know anything of his reputation in the neighborhood where Phelps lived, but only where Hill lived.

The court understood the rule to be extended by counsel in reference to time and place, but not as to the extent of knowledge, leaving it still that the witness should know his general reputation. If you show Phelps often came to a place, and had any reputation there, it will come within the agreement.

Witness — I have known Phelps in the neighborhood where I live; he has done business, and is generally known there; until these arrests, I never heard his character for truth questioned there, and, from all I have heard, I would believe him under oath.

Cross-examined — I live eight miles from the Metcalf place; have known Phelps eight or ten years; know more intimately of his reputation within the year past; had a general knowledge for many years; heard his character spoken of at the time he was sent to prison.

I found my opinion upon two grounds — one is, I never heard it called in question till since this arrest; I have done business with merchants he did business with; Wynans, and also Congor; I have only seen him there a few times; I have heard him talked of frequently, but I can't say by what proportion of the people; perhaps not by a twentieth. I heard Wynans, Darling, Congor, and others speak of him before the arrests?

Seward asks what they said of him.

Objected to.

Court rules, he can ask if persons spoke of him, but can not get the conversation, unless it touched his reputation for truth and veracity.

Witness — I lost a pair of horses, and I went to get Phelps to find them; did not find them; we went a hundred and fifty miles or so, looking for them. I went to him, as Mr. Downer recommended me to go to him, and as he said he got track of one or two horses that were stolen. I came here as witness for the people; came in on the cars.

Mr. Seward — Did you pay any fare?

Objected to.

Mr. Seward says, almost all the witnesses have been asked such questions; he wishes to show that the railroad company took him free.

The court allows the question.

Witness — I was not charged any fare on the railroad; at the hotel I have been charged for segars; I have not settled my board yet; I do n't know but I will have to pay it; I have been in twice before; once stopped at the hotel, and no bill was presented; I do n't expect there will be now, either.

To Stuart — When I was here before, I asked you, and you said my expenses would be paid.

Jonas H. Titus recalled — Known Phelps since the fall of 1844; first knew him when he was on trial in Jackson. Had the means of knowing his reputation while he was in prison, and while I was there; for a year and a half after he left, did n't see him often. While he was in prison, his reputation was good for truth and veracity; would believe him under oath. I was prison agent for four years before he left.

I have no recollection of telling H. B. Lathrop, in the fall of 1844,

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that Phelps was not to be relied on; I was surprised when I read Lathrop's testimony, but supposed, when I read it, he remembered it. Have no recollection of any conversation with Lathrop about Phelps; at that time, I could not have known much of Phelps, as he was a new comer; did not tell him to put him on a certain loom, nor do I recollect telling him he was n't to be trusted; at the time Lathrop specified, I had little knowledge of Phelps. While in prison, we always gave his word credit, and his reputation for truth was as good as any man's.

I remember a revolving cannon being constructed by Houghton; never knew of Phelps or Lake having anything to do with it; Houghton showed me a piece of wood, and with his pencil showed me the principle; in looking over a patent report, I found the principle had been patented; showed it to Houghton, and it was the last I heard of it. There was a man by the name of Goff, a negro, who knew something about it. Knew N. Pease as a keeper of the prison; knew nothing of his difficulty with Phelps at state prison; remember the event of the discharge of Phelps. Know J. B. Pierce; he was inspector while I was there; have no recollection of ever speaking to him or D. Fisher about Phelps' truth and veracity; never, to my knowledge, spoke to Barber about him, that I recollect; have no recollection of telling Barber, on the steps, that he was deceitful, and not to be trusted; can't state positively, but think a temporary warper was up in the cooper's shop while Phelps was there, but my recollection is indistinct.

To Seward — From a knowledge of his reputation, I would believe him, &c.; my knowledge began in 1844; he was then on trial; the reputation I speak of began there; I was agent three or four years while he was in prison; I then came to Wayne, and I suppose he went home, but I inquired about him after; do n't know that I have much knowledge of his reputation after he left prison; I have ever since lived in Wayne county; I am not in the employment of the railroad company; at some stages of this cause I have been employed; was deputized by the sheriff to arrest some of defendants, and, after I went into Jackson county, to hunt up bogus tools; I received five or ten dollars from Mr. Clark; I also received about twenty-five dollars besides; most of it was spent in expenses and for help; I expect no more; I have talked with the agents of the prosecution, but do n't know that I have rendered them any assistance; I have ridden a few times on the road; did, the same time Governor Seward rode on them free; I have not charged the railroad company with the time spent about this trial, and do not expect to.

I learned Phelps' character in prison in part from the assistant keepers; I do n't now recollect which of them; I spoke once with Dorrell, deputy keeper, about Phelps; since we all left the prison, and since the arrests, I have heard Dorrell speak of his character; while in prison, do n't recollect the name of any who spoke for or against his character for truth.

Darwin Downer, of Lima — Knows Phelps; he has lived seven miles from me; should judge his character for truth and veracity to be good; from it would believe him under oath.

Cross-examined — Am a farmer; have lived in Lima ten years, have known his reputation for two or three years past; during this time he lived on the Metcalf premises. Have heard some speak for, and some against him; but never heard any one speak against his truth till since

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these arrests; now some say he is a liar, and some a man of truth, but I do n't know which way the balance now is. He never did regular business where I live, but he has been there, and I have been down where he lived. Before this case I never heard but one man speak against him; that was Peter Riggs; he said he might have stole the horses, and Mr. Metcalf said he had n't stole them.

To Van Arman — Phelps came to my house once or twice. I met him often through the county. I threshed, two or three years ago, through his neighborhood, and often met the people from his town; they sometimes spoke of him, but not much; never heard Phelps' truth questioned till these trials. Knew him the same before he went to prison as since.

Did you tell H. Smith you thought he stole the horses?

Objected to, and withdrawn.

Joshua Downer — Known Phelps two years; he is in my neighborhood once in a while. Often met the people from his neighborhood at Chelsea, where they generally do business; live in the next town, about eight miles from him; knew his reputation for truth; never heard it questioned; would believe him under oath.

Cross-examined — Came in to-day; paid no railroad fare; have been in before; paid no fare then, and no hotel bill; did not know him (Phelps) personally till two years ago. Heard persons speak of him before the arrests, but not much till after the arrests; since the arrests, have heard a good deal. Frisby said he would n't believe him, as he had n't paid for bricks. Stevenson said he could n't believe him, as Frisby could n't; have, since the arrests, heard a number say they would not believe him under oath; since the arrests, people are equally divided on the question; they are a stubborn race there.

Russel Palmer, of Leoni — Live about seven or eight miles from Phelps' late residence; known him eight or ten years; have been justice of the peace twice; he practiced in my court; often meet the people from where he lives; for two or three years I was constable, and do a good deal of business in his neighborhood; have means of knowing his reputation in his neighborhood; never heard it questioned; would believe him under oath.

Cross-examined — Came from near Auburn; when I speak of Phelps' reputation, mean his reputation among his neighbors; have done business with them, and never heard it questioned; while constable, was all round Metcalf's place; was justice of the peace about ten years ago, and constable up to a year ago last spring; my principal acquaintance with his reputation was before he went to prison, and I speak principally to that; have not been in his neighborhood since the arrests, but since then the thing is mixed up; a majority in my neighborhood I think are now favorable to him; some think being in prison injured his character, and some that his pardon caused it; have seen people from his neighborhood since this trial, and some spoke for, and some against him; heard Congdon speak for him.

Dr. H. J. Carr, of Lima, six or seven miles from Phelps; know him; practice in his neighborhood; know his reputation there; good—from it would believe him.

Cross-examined — My practice does not extend into his immediate

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neighborhood, and I do n't know his reputation there. I speak of my neighborhood; before the arrests did not hear him spoken of save when I inquired. I practiced in his family, and asked Clark and Downer about him; may have asked others; my inquiries related to his promptness in paying debts; think I got satisfactory information, and it proved true; this was last fall. It is from what I have stated, and my acquaintance with the man, that I form my opinion; since the arrests, I have heard discussions as to his truth, but not before.

Have been in Lima about a year; came there from Manchester; first knew Phelps about a year ago, but think I heard of him before; while I was in Manchester, did not go to his house, but his family called to consult me professionally. Came to Detroit to-day; can't say at whose cost; paid no railroad fare; Mr. Harris subpœnaed me; stop at the Exchange.

To Van Arman — I practice in Sylvan Centre, but can't say I am well acquainted there.

Court adjourned to the 12th, at eight A. M.

MORNING SESSION — 54TH DAY.

TUESDAY, August 12.

J. M. Corydon — Know Phelps; lived seven miles from him. Know his reputation; it is good, and I would believe him.

Cross-examined — It is ten years since I first knew him; not very intimate, but often met him at town meetings, &c. Never heard his truth and veracity discussed or questioned; never heard his truth questioned or spoken of till this suit. Since the suit, I have heard it spoken against and for. Heard Wynans, of Chelsea, and my brother, both merchants, say it was good. Since the arrests his reputation is matter of general conversation; also heard C. Winans and Elder Morton say it was good. My brother did business with him, and, as I understood, he said he thought it was good as far as he knew.

I heard Fenn and several say it was bad before the arrests. When he went to prison, the community was divided as to whether he was guilty or not. I was never questioned, and never told what I would say, till I came on the stand; paid nothing on the railroad.

Mr. Van Arman — If it will save time, we will admit that all the witnesses are brought in free of charge, and go back free.

Foster Chapman — Live at Manchester, nine miles from Sylvan Centre, twelve from Francisco, and twelve from Chelsea. Have frequently seen Phelps; know some of the people in his neighborhood. I have heard him spoken of in Manchester and Sharon more particularly. Have means, to some extent, of knowing his reputation for truth and veracity. I never heard it called in question till the last three months. Would believe him under oath.

Cross-examined — I only know a small proportion of the people in his neighborhood. I speak of his reputation in Manchester and Sharon. I heard him spoken of in Dr. Conklin's family, but never heard his truth spoken of. I live two miles southwest of the village, have been all through there, but do n't know the Metcalf-place. I am acquainted with a good portion of the people of Sharon. I was clerk in a store; I have

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been through the town collecting: this was seven years ago. Conklin lives six or seven miles from where Phelps lived in Sharon. I have seen him in the village of Manchester several times; once, a year ago, and at the time he was spoken of by Conklin; he never lived there.

Heard a man from Jackson lately say several times, that his testimony should be corroborated.

To Van Arman — Do n't know this man, but have seen him frequently in Manchester.

To Frink — It was not Higby.

H. H. Norton — Live in Livingston county; have lived in Dexter, Washtenaw county; left there three years ago. Have known Phelps from fourteen to eighteen years; knew him in Orleans, N. Y., next in Dexter. While I lived in Dexter I knew him well; he and I did business there. Know his reputation; it is good; never heard his truth questioned, &c. Have seen him often since, and been in his neighborhood, but never heard his truth questioned.

Cross-examined — In '34 or '35 knew him in Orleans county; he was then a farmer; he was then a man; then lived either five or six, or about fifteen miles from him; do n't know which, as I can't remember who I was with at the time. About then, did business at two places at these distances. I had a good opportunity, and profess to know his then reputation in his neighborhood. I did business there; can't tell the name of any who lived there, but if I had my book I could. Do n't know if he was married or owned his farm. Frequently called on him to ask about the responsibility of persons, as I was selling through there. Can't tell who lived with him; never heard his reputation questioned there.

When I knew him at Dexter, I lived a mile west of the village; this was in 1838 or '40; he was traveling through from Oakland county to Sylvan; he said he then lived in Oakland; do n't know how far from Dexter, or if it is forty miles off. I saw him then for about an hour; do n't know where in Sylvan he was going to; the nearest part of Sylvan is about seven, the furtherest fifteen miles from Dexter. Do n't know what his business, or religion, or politics were then. At that time, I would have said, as I never heard it questioned, I would believe him. I should have qualified my answer as to knowledge of his reputation by telling all I knew; but would have said I know it with that qualification. Next saw him at Michigan Centre, twenty-eight miles from Dexter, in 1840; I was there looking after some debts. I did a fanning-mill business there; he was in a distillery. Do n't know if he was married that winter. I was through there collecting two or three times. Without my note book I can't tell who I saw and did business with there. Saw Phelps only once there, at the tavern; do n't think we drank. Do n't know his then politics or religion, or who lived with. Would have then said, from my knowledge, I would believe him. Next saw him near the centre of Sharon, in 1841 or '42. I then lived at Dexter, about fourteen or fifteen miles from there. I was collecting debts. I think he said he lived in that town; do n't know what part. Met him on the road, both were traveling; do n't know his then business, politics, or religion, &c.

Next I saw him in Sylvan, a year ago last spring, at the Metcalf place.

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I was then living in Livingston county, thirty miles off. I went to Napoleon, seven or eight miles south of Grass Lake, collecting, and returning met him near his house. Don't know if he was then married, his religion, &c. We spoke an hour or so, and I went on to Sylvan Centre and home. In April last, I went with O. Clark to his place, and Clark went in and found he was not there; did not see him again till at this suit. I have done a fanning-mill business through that county, for ten or twelve years, and never heard his truth questioned. Since I left New-York, I can't swear that I have ever lived within fifteen miles of him.

To Van Arman — Where I did fanning-mill business is through Jackson, Washtenaw, Livingston, and in almost every town in these counties, and particularly in Sharon and Sylvan.

Elisha Congdon — Live at Sylvan; have resided there eighteen years, seven miles from Phelps; know him, and have had means of knowing his reputation; never heard it questioned; would believe him, &c. Am a merchant, his neighbors do business with me; have known him seven or eight years.

Cross-examined — Live at Chelsea, in Sylvan; when I first knew him I farmed at the place where I now am, and he lived up near to Powe[illegible]'s. I was only once at his house, but was frequently in the neighborhood; this was before he went to prison; he was then farming; don't know if he owned or hired the farm, or what family he had; also frequently saw him at Sylvan Centre and round the town; he used to attend lawsuits; saw him occasionally till he went to prison; have not been to his house since he came from prison. Don't know his business or family since he came from prison, but have met him round the town. Don't know if now he has a wife or children. I have seen him often in Chelsea, and in my store, in the last two years. Once he came to get money from me in advance, saying he would bring wheat for it after a little; I gave it, and he brought the wheat.

At the present time I have heard some of his immediate neighbors speak for and against his truth; most against it; but never heard it questioned till after the arrests.

To Van Arman — Since the arrests, I have heard many speak for and against him. Prior to the arrests, I often saw him, and heard him spoken of, but never heard his truth questioned; know the people of his neighborhood.

To Frink — I never spoke against his truth.

Samuel Chadwick — I live at Jackson; have known Phelps fourteen years. First knew him in Oakland county. I was, in 1840, deputy marshall, and took the census in the town he lived in.

Next knew him when he was in Sharon, and also in Sylvan. I was acquainted about where he lived in Sylvan; did business, and was often there.

Was guard six months, while he was in prison.

Since he left prison, have known him in Sylvan for two years. I have been through there about every six weeks. I am traveling as insurance agent, among farmers and merchants. Never heard anything against him till lately; would believe him under oath.

Cross-examined — My regular business is a jeweler and watchmaker. I moved from Oakland, in 1842. In Oakland, I lived at Farmington,

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fifteen miles from where lived. I taught singing school near him; he was not then married; he was living with his brother. In the course of the year, I was, perhaps, in all, three months in Milford, where he lived. I saw him often, but can't say how often. Do n't know if he attended my singing school; think he is not a musical person. I do n't recollect ever being in a tavern at Milford till a year ago.

I next knew him at my shop, at Ann Arbor; he then lived in Sharon or Sylvan. While in Ann Arbor I had no acquaintance with him beyond his coming to my shop to have things done; this was in 1842 or '43. I often saw him in county conventions at Ann Arbor; think he was delegate to county convention to nominate delegates to state convention.

I next saw him at the state prison. I was appointed guard, and when I went to the prison, in the fall of '44, he was a convict there. After he left prison he lived on the Metcalf-place. My duty as guard led me to go round the cells, and also to go through the shops once, or oftener, a day. I have known him at Milford, Sylvan, the state prison, and Sylvan again. I have signed a paper saying I regretted having circulated a story about Mr. Wilcox and Miss Turner; the matter was not slander, and as the facts were only known to a few, I signed the paper at the request of Wilcox. Know Mrs. Thayer — there are reports about her and me.

(Witness declines to answer as to the truth of such reports.)

I came to Detroit about three months ago; did not come with Mrs. Thayer. I have a free ticket on the cars till the end of the trial. Have had nothing to do with the trial but to be here as a witness. Did, at the request of Clark, subpœna witnesses from Oakland.

Mr. Merriman lost a watch in Jackson. I took it as a matter of joke between him and me, and came to Detroit for two or three days; when I returned I gave the watch to him. I did not tell him how I got it. I told him a man in Detroit gave it to me. Do n't remember telling him I gave, or that the man in Detroit wanted ten dollars for it. Do n't recollect telling him so, but won't swear I did not. He did not give me ten dollars. I did n't get the watch from a man in Detroit. I am very intimate with Merriman and others, and it is common for us to take each other's kerchiefs and things for joke. It was thus I took the watch. I intended returning it at once, but business called me suddenly to Detroit, and while I was away he offered a reward, and when I returned I went to his store and gave it to him, saying a negro in Detroit gave it to me. He is now my family physician, and we continue on good terms. I took it merely as a joke. Others have taken things from me in a similar manner, and returned them.

John Fisk — Live at Sylvan; have resided there over two years; came from New York. Know Phelps; the summer of 1849 he worked on the next farm to me; the next year he was on the Metcalf-place, about six miles off. Know his reputation; never, till these arrests, heard it called into question for truth; often heard him spoken of as being in the state prison. Do n't know of any occasion when his truth would be questioned. It is good, so far as I know; would believe him, &c.

Cross-examined — Came from Wayne county, N. Y. Went pretty much a stranger into Sylvan. My farm is in Sharon, on the Sylvan

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line. Phelps owned the farm adjoining mine; he wanted to sell it to me. He told me he had just come from prison. We moved to the farm on the other side of Phelps, and stayed there till last winter. I then moved to the south of Sylvan Centre. Phelps stayed where I first knew him, a part of the summer of '49. He then sold to Powell, and moved to his father-in-law's, three miles off; afterwards he moved to the Metcalf-place, three or four miles from me. I have been most of the time at home. Do n't know of any occasion when his truth could be discussed.

At present, the biggest part of his neighbors speak very hard of him. I state this from what I have read in the papers; it was after the arrests, they began to speak hard of him.

Dr. T. Curtis — I reside in Lyons, Oakland county; have lived there seventeen years. Phelps lived in Milford once, the next town to me. Am acquainted, and did business in Milford. If his truth had been questioned there, I think I should have heard it. At that time my business in the village and town where he lived was very extensive. Had the means of knowing his reputation for truth and veracity; heard nothing against it; would believe him, &c.

It is ten years since I was there. Have known him four years; lived seven miles from him; knew and practiced among his neighbors.

Cross-examined — He lived in Milford, I in Lyons; he was then, I think, unmarried, and lived with his brother; he left there about ten years ago. Know nothing about him since, till a year ago. The first I heard was, that he went to prison, next, that it was found he was innocent, and pardoned.

About a year ago I saw him in Lyons; he came and took process against men in Rose for stealing his rails, and they took process against him for perjury. I do n't think I assisted him in the matter; he was arrested, and I think gave bail to appear the next day, and the parties did not appear against him, and he was discharged. Never heard his character called in question while he lived there.

After he left, the first I heard of Phelps was, that he had gone to prison, and I then expressed as much surprise as if it was any other neighbor. I did not think he could be guilty, and when I heard he was pardoned, on the ground of innocence, it strengthened my first opinion. At the time of the arrests he appeared very indignant, and said to me his statements were untrue. He swore to the usual affidavit, that he lost fifteen hundred rails, and believed they stole them. They said it was false; they had n't taken fifteen hundred rails; that if that number was missing, others stole some, and they took about three hundred or four hundred, but did not steal them; they took them without his knowledge, but meant to pay for them; on these facts I said his affidavit was right.

To Stuart — These persons after paid for some of the rails.

Question — Was the rumor about murder, you spoke of, as groundless as the rumors about you?

Witness — I can't say.

Dr. H. K. Foot — Live at Milford, Oakland county; have lived there twelve or fourteen years; have been in the legislature from there; so has Dr. Curtis. Knew Phelps in Milford and in the adjoining town;

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knew him as well as those generally residing there. Knew his repute for truth and veracity — good; would believe him, &c.

Cross-examined — I knew him for about four years, then he left, eight or ten years ago. I remained there. Milford is thirty miles from Grass Lake depot. Do n't know where Francisco is.

Dr. S. M. Mowrey — Live at Milford. Was member of the legislature and state convention. Knew Phelps there, and never heard anything against his repute for truth and veracity till since this trial. Had occasion to know it; would believe him, &c.

Cross-examined — I moved to Milford in January 1841; Phelps was then there; he was away a little, came back in the spring, and I think left in the winter of '42. From the time I first knew him till he finally left there, was about twelve or eighteen months, but he was away part of the time. I speak of his reputation there then, but I have known something of him since, but we have not lived in the same neighborhood.

Fraser — What have you known of him since he left Milford?

Objected to.

Mr. Fraser — The rule as to supporting testimony is very different from that in reference to the impeaching testimony; we have a right to find out his means of knowledge.

Witness — While in the legislature I was on the committee on prison affairs, and feeling some interested about Phelps, I at the prison inquired as to his character while there.

Seward notes an exception to receiving testimony.

I asked the agent what his conduct was there; the agent spoke well of him; a petition for his pardon had been got up, and one of the contractors had taken an active part for him. I told the agent my object was to determine if I would sustain the petition; the agent spoke favorably of it, and of his conduct while in prison, and that was one reason why I sustained his application.

To Seward — Titus was the agent; his conduct was reported good, and health bad; bad health also entered into my reasons. The committee were a number of days at the prison. I extended my inquiries to a number besides Titus; inquired of several of the officers and others around there as to him; all I heard was favorable to him.

I have no knowledge of his reputation where he lives or did live, save at Milford and in prison.

Niel F. Butterfield, of Kensington, Oakland county — Have lived there fifteen years; knew Phelps when he resided in Milford, the town next to Kensington. I was acquainted in Milford, and if he was spoken against had opportunity to know it; good — would believe, &c. Knew him intimately while he was in Milford; was then deputy sheriff; have only seen him a few times since he left there.

Cross-examined — He then lived seven miles from me; it is eight or nine years, I think, since he left there; do not know how far Sylvan is from where I live; Dexter is twenty-five miles from me. Since he left, I have remained at Kensington. Speak of his reputation while in Milford.

Know Dr. Curtis. The last I knew of Phelps, I kept a grocery store. Knew him best from '38 to '41; was then deputy sheriff, had business

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with him, and he dealt at my store. Since this trial, in reading the testimony, I may have expressed an opinion against his credit, but do n't know that I did.

Did you not say, in Howard & Toms' office, that any number of witnesses could be brought from Kensington to impeach him?

Had some conversation a few days ago with Toms; he said he was a bad man; I may have said, on account of his being arrested for perjury, some witnesses might be got in Milford to impeach him; do n't recollect what I did say.

To Stuart—They did n't apply to me to impeach, or ask a list of names; Toms said the witnesses I alluded to would be of no use; the arrest I speak of was about the rails.

Elijah Johnston, of Kensington — Knew Phelps when he lived at Milford. Had a general acquaintance in his neighborhood, and had an opportunity of knowing his reputation—good—never questioned; would then believe, &c. Since then, know nothing of him.

Cross-examined—Then lived seven miles from Phelps. Speak of from '37 to '41. Was then a shoemaker. He used to be at my shop, and I used to be at Milford. The general talk was, he was an open, good-hearted fellow; he left, I think, in '42. Do n't know his reputation at the several places where he lived since he left Milford.

John L. Armstrong, of Milford — Has lived there since '36; knew Phelps there, and his reputation for truth and veracity; never heard any thing against it, would believe, &c. My business there was milling; had frequent business with Phelps and his neighbors.

Cross-examined — Had a saw and grist-mill; Phelps came there about the same time I did; the first business he did was, he took up some land in Rose; he lived with his brother, who had a saw-mill; he did some law business. He left in '41, and since that I have not lived or been in any neighborhood where he lived. Speak of his reputation since '41 and '42; do n't know it since.

To Van Dyke — From my business and acquaintance, had a fair opportunity of knowing his reputation, and hearing if any thing was said against it; never heard it questioned.

L. H. Austin, of Milford — Have lived there fourteen years; know Phelps, and his reputation for truth and veracity there; it was good; would believe, &c.

Cross-examined — First knew him in '37; he remained there till the winter of '41, and then left for the south-west some where. Have no knowledge of his character in the places where he lived since.

Terry Hopkins, of Milford — Is a mason; knew Phelps there; his reputation for truth and veracity, good — would believe him, &c.

Cross-examined — Have lived thirteen years in Milford. Can not tell if it was in '34 or '35 I went there; think it was n't in '33.

H. C. Andrews, of Milford, a merchant — Knew Phelps there. Knew him first in Monroe county, New York. Knew him twenty-six years ago, and ever since. Know his reputation — good — would believe him under oath.

Cross-examined — Never heard anything said to question his reputation for truth and veracity. It is considered good in Milford; that is the only place I speak of as to his present reputation. He left there ten

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years ago, Do n't know his reputation in any of the several places he has lived in since he has left Milford. Before he finally left Milford he was absent a year.

Since these trials I have heard his truth questioned in Milford. Have heard two say they would n't believe him, others say they would. I speak of his reputation at the time he lived there, and his present general reputation there, as I have lately heard more speak for than against him; but presume they referred back to the time he lived there. Heard one person speak of his truth at the time he went to prison. This person said he had made some untrue representation about the purchase of a stock of goods in New York.

In Monroe county, he lived with his father. He was young, from eleven to eighteen years of age; his father is now dead. I came west in '33, and first saw him here in Birmingham casually, and did not see him again till he came to Milford in '37 or '38. He was in no regular business in Milford till about '41, and lived part of the time in Rose. Do n't know his reputation, but he was elected to some office there. He resided in Milford in 1840; in the spring of '41, he went for two or three months into the mercantile business. Part of the goods were returned to Detroit, and his store ended. He soon after left, and before leaving, did not go into any other business. Before he finally left, he had been to Michigan Centre. I was at state prison in the fall of 1847, and he was then there. Do n't know what business he pursued since he left Milford.

To Van Dyke — I was subpœnaed by the defence to impeach Phelps, they did not call me. In Rose, he was elected clerk and justice of peace; if anything had been said against his truth and veracity from any business, &c., I would be likely to hear it; never did, &c.

Morgan L. Smith, of Milford — Has resided there since 1837. Was postmaster and justice of the peace for eight or ten years; knew Phelps there, and had an opportunity to know his reputation; good; would believe, &c.

Cross-examined — Went to Milford in 1837; he then lived in Rose, but was occasionally down to Milford. He was a single man.

In the winter of 1838 and '39, he came to live in Milford, and traded in horses, wagons, and land. He left Milford in the fall of 1840, I think; lived at his brother's. He was a resident in Milford some three or four years; he returned after he left in 1840; he was gone from six to nine months. Understood he was at Michigan Centre; returned in the spring or summer of 1841, and left finally in the following fall. Have no knowledge of his reputation since he left there. When he returned in 1841 he opened a store for a short time. There was some trouble about the goods, and he quit business. Some of his goods were sent back; he remained there some time after.

William Seaman, of Milford — Has lived there since 1837. Knew Phelps there, and his reputation for truth and veracity: good; would believe, &c.

Cross-examined — Knew Phelps from 1837 to 1841; lived in the same village. In 1841, he went west. While I knew him he was away a spell; he left, also, in 1840, and returned in 1841. He had a store for a short time; he gave the goods, up to some one, and they were removed. Know nothing of his reputation since he left there. I never

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heard his truth spoken of. He came to Milford soon after me, and lived at Milford save the time I speak of; but may have been away a few months. Did not know of his being an officer at Rose; if he was, I would be likely to know it.

To Stuart — Heard, at the time, that he got the goods under false pretences; know nothing of it but flying reports.

A. S. Arms, of Milford — Has lived there fifteen years. Knew Phelps there, and his reputation for truth and veracity; never heard anything against it: good; would believe, &c. I was subpœnaed here by the defence.

Cross-examined — I knew Phelps from the time he first came there, eleven or twelve years ago, till he left there. Can't say when he left there; he was back and forward some. Remember his having goods there; he was at the Centre before he got them; do 'nt recollect how his business terminated there. He used to try cases, and was often sworn in court. I never heard his truth questioned. I have been in courts where he was sworn. Since he left, know nothing of his reputation. I speak of what I knew then, and since, among the people in Milford. Since this suit, I have heard a man question his truth, but never before. I speak of his reputation, because he did business like others, and was sworn, and his truth never was questioned.

A. J. Deyo, of Milford — Has resided there since 1838. Knew Phelps there, and his reputation for truth and veracity; never heard it questioned; would believe, &c.

Cross-examined — Knew him from fall of 1838 to 1841. In the fall of 1840 he left, to run a distillery; think he did not leave there finally till 1842. He acted mostly for his brother, up to 1840. Had a farm in Rose, and went there sometimes. In 1841 he had a stock of goods; did n't continue the business long — not a year. I lived in the village. He was a man who, in joke, would tell pretty good yarns, and that is the only way I heard his truth spoken of.

Know nothing of his reputation since he left, till these arrests; since then, have heard a good deal for and against him, in my neighborhood. Those who speak against him, base it principally on his being in state prison.

John V. Clark, of Milford — Has lived there eighteen years. Know Phelps; first knew him nineteen years ago, in New York. I was justice of the peace in Milford for eight years, up to July last. Knew Phelps' reputation there for truth and veracity; never heard it questioned; would believe, &c.; consider his reputation good, till since this suit.

Cross-examined — First knew him nineteen years ago; he was then a young man. Can't tell what business he was then in, but think he coopered. I lived three miles from him; knew him over a year there; I was a good deal acquainted there, but not with the majority. I am over forty, and of the impression that he is older. I lived three and a half miles from Milford, and he in the village, for over two years; never heard his truth spoken of. He left nine or ten years ago. I think I was justice of the peace while he was there. I heard him try a suit, but forget if I was witness or justice of the peace. Know nothing of his reputation since he left Milford. Base my opinion on the fact that nothing was said against him at Milford.

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To Fraser — Had a good opportunity of hearing, if anything was said against him.

John L. Andrews, of Milford — Has lived in Milford and vicinity seventeen years. Know Phelps; knew him in New York, and in Milford. Never heard his reputation for truth and veracity questioned; it was good; would believe, &c.

Cross-examined — Knew him sixteen or seventeen years ago, in New York. We were boys, and went to school together. I was ten or twelve, he was eighteen years or so; knew no more of him there than going one winter to school with him.

Came to this state sixteen or seventeen years ago. Was living in Brighton, five or six miles from Milford, when he came there; the winter of 1840 or 1841, he and I lived in Milford; was in a mill; he was selling goods; while selling goods, was the only time I know of our living in the same neighborhood. Do n't know how long he sold goods.

To Fraser — While at Brighton, I was almost every week at Milford, where my friend lived, and did business there.

TUESDAY, 2 P. M.

Jonas G. Butler, of Oakland — Lived in Commerce for ten years; knew Phelps; he lived in Milford; know his reputation for truth and veracity; it was good; would believe him on oath.

Cross-examined — Part of the time he was farming; he stopped with his brother from '36 to '41. Did business at Milford, and was acquainted with the people there.

David G. Service — Knew Phelps at Milford. He lived in the same town with me.

Cross-examined — Never heard any one say it was good or bad; do n't know what business Phelps was engaged in. Saw him frequently; think he had no family. I moved away before Phelps left there; do n't know if he was away a short time; was back after I left. At some time he was in commercial business; do n't know his reputation any where but in Oakland.

To Van Arman — If anything was said against him, I was round so I would be likely to hear it.

Wm. A. Davis of Sylvan — Know Phelps since one year ago last spring. Live in the east, he in the west of the town. Am acquainted with his neighbors; his reputation is good, would believe him on oath.

Cross-examined — Have lived seventeen years in Sylvan. Heard of Phelps before, but did not know him till one year last spring. Do my business mostly at Chelsea; am often at Sylvan Centre; never met Phelps there. Have not heard much said one way or the other about him. Speak of my neighborhood; have heard him spoken of, but not his reputation till two weeks. Have heard a good many in the town lately speak for, and some against him. Never saw him in my neighborhood. No paper circulated in my neighborhood about his reputation; do n't remember any one from his immediate neighborhood I heard speak of him.

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To Van Arman — If Phelps had a bad reputation in his neighborhood, think I have the means of knowing it, as his neighbors and I do business at the same place. Never heard it questioned.

Joseph H. Duran, of Sylvan — Has lived five years near Chelsea. Know Phelps — live six miles from his late residence; acquainted with his neighbors; know his reputation for truth and veracity—good — so far as I know, would believe, &c.

Cross-examined — Speak of his reputation where I live; do n't know as I ever heard his reputation for truth and veracity questioned or spoken of till after the arrests in my neighborhood. Knew him first a year ago last spring; he was then pointed out to me; saw him at church, and asked who he was. Saw him another Sunday after, and not again till after the arrests; saw him at Chelsea since the arrests. Before this never inquired as to his character; since the arrests have heard good and bad reports of him; they are about equally balanced.

To Van Arman — Prior to the arrests knew nothing of his character; mean by that, heard nothing against his character: had the means, and think I should have heard if people spoke against his reputation.

To Seward — If he had a bad character at Chelsea I think I should have heard it. It might have been bad at Jackson and Milford without my knowing it; it might also have been bad at his immediate neighborhood without my knowing it. Before the arrests, heard nothing from his immediate neighbors; since, the balance is against him.

To Van Arman — Am fully aware of what they say since the arrests, in his neighborhood; it has grown out of this trial; had just as good means of knowing what they said, before as since the arrests.

Rev. J. Moulton, of Sylvan — Lived at the Centre till about three months since; lived there two and a quarter years ago. Known Phelps over two years. Was there as pastor; know the population about Sylvan Centre; know his reputation there for truth and veracity; it is good; would believe him under oath.

Cross-examined — The neighborhood I mean, is Sylvan Centre and that township. Do n't recollect that since I knew him I have heard him spoken of by people out of that town. Speak, up to the time of the arrests. Since the arrests, it is both good and bad. Am acquainted through the whole township. Am a congregationalist minister; till the last three months, my church was at Sylvan Centre. Most of my congregation came from the east part of the town; Metcalf's is two miles from Sylvan Centre. We had occasional hearers from there. Never baptized any one in that neighborhood, or married any one there. Do not know that I heard his truth mentioned either way before these arrests. At different times I have seen most of the persons from about Metcalf's place. Had no conversation with them about Phelps till after the arrests. Before the arrests, never heard any one speak of his truth and veracity.

Do n't know that I can judge of his reputation since, in my neighborhood; some speak for, and some against it. Can't tell which way the balance is. Since the arrests I have not heard it mentioned by any of his immediate neighbors. For the last three months have lived seven miles from Metcalf's. Save from the papers, do n't know that there is anything said against him in his immediate neighborhood; but know

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that there has been at the Centre; paid no fare on the railroad for a long time; have traveled at half price.

To Van Arman — It is a general rule that ministers are charged only half price.

James Davis, of Lima — Knows the Metcalf place; lives nine or ten miles from it. Lived eight years in Lima. Am acquainted at Sylvan Centre; know Phelps; he is acquainted about where I live. Have never heard anything against his truth and veracity till since these trials. Since then have heard a good deal; if it existed before, think I would have heard it. From my acquaintance, I think I would have heard it if his reputation was bad; would believe him on oath.

Cross-examined — Live about the centre of Lima, and seven miles from Sylvan Centre, and nine or ten from Metcalf's. Am about the country some; know some of the people about Metcalf's; have been through there frequently, but not to stop. Am not generally acquainted there or at Sylvan Centre, nor in the immediate neighborhood where he lived in Sharon. He might have an immediate local reputation without my knowing it; if it was broader, I would be like to know it.

I first saw Phelps in 1842 or '43; the same winter I saw him manage a lawsuit; have seen him frequently since. Since then have seen him before I saw him in Detroit, but can't say where. May have seen him once a year since, and may not; do n't mean to say I have. Have seen him pass along the road; have not spoken to him since. It may have been three or four miles to where he lived; was within that distance of where it was then said he lived, in Sharon; can't say that while he lived in Sharon, I was in his neighborhood; can't say I knew his reputation among his neighbors in Sharon. Never heard his truth called in question. Have known him by reputation eight or nine years; speak of his reputation for eight or nine miles around me. Do n't know that I am acquainted with the majority in that space — know a great many on certain roads; do know the majority. Do n't know half the people about Metcalf's; of his present reputation there, I can only speak from the newspapers.

To Van Dyke — I mean I know a great many people; never heard anything against him, and think I would have heard it if it existed.

Hon. Geo. Danforth — Has lived fourteen years at Ann Arbor. Know Phelps since 1842; know the place he lived, in Sylvan; know a number of the people up there; have been practising law. Never heard his reputation for truth called in question; if his general reputation had been questioned, I would be likely to have heard it; would believe him on oath. Never heard it questioned till the arrests, since then have; previous to five years past, he was often in Ann Arbor.

Cross-examined — Have practiced law fourteen years; live twenty miles from Metcalf's; do n't know all the persons there. Do not profess to know his general reputation where he lives, because, perhaps, I do not know half the people in his immediate neighborhood. I predicate my opinion on the fact that I never heard his truth questioned. Speak of his reputation in his and my neighborhood; know many, but not all the people in his neighborhood. Have frequently heard people speak well, but never one against him till these arrests. Was at Godfrey's since last fall, and before the arrests, but not since. Only stayed a few

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hours; nothing at all was said about Phelps, from '38 up to that time. I was there frequently; not so often in the last four years, as before. I used to see Phelps frequently round there from 1842 to 1844. I used often go there electioneering, and also to try causes.

To Van Dyke — We often know the reputation of men who live at a distance, from hearing of them and meeting them, without an intimate acquaintance with all his neighbors. Often met Phelps at county conventions.

O. W. Moore — Live in Ann Arbor. Am well acquainted in Washtenaw county; have very often seen Phelps in Ann Arbor, and his neighbors also. Knew Phelps when he lived in Sharon, well, and his neighbors; his reputation, as far as I know, is good, and from it would believe him on oath.

Cross-examined — Practice law.

Jno. C. Winans — Resided at Sylvan Centre till a year past, since which I have lived at Chelsea, where I am postmaster, and a merchant. Knew Phelps in Sharon and Sylvan, and his neighbors; knew his reputation prior to the arrests, and never heard any thing against him since he came from the prison. His reputation was good, and from it would believe him on oath.

Cross-examined — Went to Waterloo in 1839; staid there two years, and went to Sylvan Centre in '41; became acquainted with Phelps in '42; he was then a farmer and pettifogged suits. He had a wife, and lived in the town of Sharon. Phelps went to the town of Sylvan to live after he came from prison; the first I knew of him then, he had moved on to the Metcalf farm. About the time he went to Indiana, with Orman Clark, heard somebody say that they surmised he was on a blacklegging excursion; it was a mere surmise; knew nothing about it; inquired nothing about it; should judge it bad, from what I have heard since last spring.

To Van Dyke — Fenn, Lappin, and others, I have heard speak against it in reference to this suit.

Wm. F. Hatch, of Sylvan — Has lived there eight years. Know Phelps; he lived six miles from me last summer; knew him in Sharon; he lived three miles from me. Am acquainted with the neighbors round him; his reputation good, and would believe him.

Cross-examined — Have known Phelps eight years, knew him about eighteen months before he went to prison. My knowledge extended over three-quarters of the town, and to half the inhabitants; in two years I have talked with two-thirds of that half; often met the entire of the Riggs', but till the last Sabbath, never heard them speak of Phelps.

Since the arrests there has been enough said of him to hang the devil. Some of those who speak of him are pretty mad; the Riggs' are among these.

John B. Dair, now of Niles — Knows Phelps, knew him at state prison; I succeeded Lathrop in his contract, and was there from September 1847, to August 1848; never heard Phelps' reputation questioned; he worked on my contract; reputation good; would believe him, &c.

Cross-examined — Never heard his truth questioned. Had the immediate supervision of Phelps all the time I was there; the keeper had

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control, but I spoke to the men ten times as often as he. Dixon was keeper in that shop part of the time.

Jacob Berry, of Sharon — Has lived there thirteen or fifteen years; at first followed farming, since then a joiner; lived in 1842 or '43, half a mile or so from Phelps'. Then knew him two years. Since he came from prison he has lived two and one half miles from me; heard nothing against his truth; his general reputation was good before he went to Jackson; and since he came from prison, I have heard nothing against his truth; I would say his reputation was not first quality, nor bad; would believe him, &c.

Cross-examined — At present, some speak for and some against his truth; for the last six weeks, have heard a good deal; taking that into account I do n't know that I could pass an opinion.

To Van Dyke — Could not judge of the effect of all that has been said lately, unless I heard the testimony.

J. C. Lord, of Manchester — Has resided there five months; before then lived eight years in Sharon; before then lived at Sylvan Centre; knew Phelps there; I was then a merchant; for eighteen months there, I was in contact with the people of Sylvan. Know his reputation — good; would believe, &c.

Cross-examined — When I knew him first, nine years ago, he stopped in Sylvan Centre, and attended lawsuits; he was there six or eight months; he then moved to Sharon. Soon after I also moved to Sharon. Was there till he went to prison; then I lived four miles from him; saw him, and was often collecting in his neighborhood; never heard anything for or against his character before he went to prison. Lived in Sharon when he came from prison; since he came from prison, we have not lived in the same neighborhood; but I have been through Sylvan Centre three or four times a year, but not at Metcalf's. Do n't know what is now said at Metcalf's about him, still often see people from there. Live now thirteen miles from there.

To Van Dyke — Do n't know where Phelps has lived since he came from prison; often see people from Metcalf's place in Manchester.

To Seward — In a year I have seen four or five of the Riggs'; they gave him a hard reputation. I have seen them often in a year, but did not hear them speak of Phelps. Have seen several from that neighborhood since I came to Detroit. Also seen several of them at my place. Saw S. Chapman two or three times during the summer; he said nothing of him; Fisk gave him a pretty hard name.

To Van Dyke — Heard these men I have named, speak against him since the trial, but not before, though I have often seen them before.

Goodrich Conklin, of Sharon — Lived there nineteen years; am a farmer; my father was a doctor there. Knew Phelps before he went to prison; he then lived in Sharon; and knew the people round him; also knew many in Sylvan; previous to these arrests, his reputation was good; would believe him.

Cross-examined — I speak of his reputation before he went to prison. Since then, have no knowledge of it.

Alanson Case, of Manchester, a merchant — Lived there sixteen or seventeen years; knew Phelps at Manchester, formerly; knew his reputation there; it was good. All I know of it is good, up to the arrests; would believe him. Am brother to Barnabas.

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Cross-examined — When I knew him, he lived in Sharon; it was sometime from 1841 to 1844; he was about four miles from Manchester. Speak of his reputation in Manchester and Sharon; do not know if he lived a year in Sharon then. My knowledge ended at the time of his arrest, and I do not speak of it since.

Charles H. Wines — Resided in Sylvan seventeen years, east part; known Phelps nine years; he lived in Sharon and Sylvan during that time; know his reputation for truth and veracity; it was good; I would believe him under oath.

Cross-examined — Was acquainted with many of his neighbors; heard nothing against his character for truth and veracity; he has lived five and a half miles from me since he came out of prison. Am well acquainted with the people in the Metcalf neighborhood, and never heard them say anything against his character for truth and veracity; have met them on the Sabbath, on town-meeting days, and on frequent occasions — the Metcalf's, Riggs', Heacock, Buck's.

Nathan Morse, of Sharon — Lived there eighteen years. Knew Phelps when he lived at Sharon; knew his reputation; never heard it questioned till these arrests; good; would believe him on oath.

Cross-examined — Never knew exactly where he lived, but was well acquainted in the neighborhood. I lived seven miles from him, and was accustomed to meet him frequently; he was captain of a company there; his company used to train in our neighborhood; I used sometimes to say they were going too fast and could n't sustain the company; they used to reply they would, they had good officers, and Phelps was a fine fellow. Never was at his house. I speak of Sharon, where he commenced that company. Can't say I know much of his reputation since he went to prison, till these arrests; since then, opinions are about equally divided.

Turner Stetson, of Detroit, a blacksmith — Was in the railroad depot employ at the time of the fire; when I saw the fire it was coming out of the cupola.

Mr. Frink objects to the testimony; proof of where, and how the fire originated is not rebutting testimony. It was part of the case made by the prosecution, and being touched by them in making their case, they can not now return to it.

Mr. Fraser — All the prosecution was bound to show in the first place was, to raise the presumption that an arson was committed. The defence went on to show that the fire originated several feet from the cupola. We do not desire to go beyond meeting the case made by the defence. We do not seek to fortify any part of the case originally made, but merely to repel the proof offered by the defendants, to show that the fire originated at a distance from the cupola. Even if we sought to go back to fortify any portion of the case made, it would be still a question of practice, and competent for the court to permit us to do so. There is no rule of law against it. The court might, and, in a case like this, would permit us. When counsel go into testimony that anticipates the defence and does it unnecessarily, the courts do not allow them to return and fortify the point; but here we did not anticipate the defence. It was necessary and incumbent on us to raise the presumption of an arson, and we did no more; we did not, and could not anticipate that they would raise an issue of where the fire broke out; and we now do not ask to go

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further than to meet that issue. Cites, 2 Cowen and Hill, 710 to 714, and other authorities.

Mr. Seward supposed there could be no dispute upon the point; that it was well settled that when the prosecution touched any point, they should then exhaust their proof upon it. This is the rule in civil cases, and in criminal cases it is enforced with even more rigor. These are the two principles that lie at the bottom of the present question, and it only remains to apply them to the present case.

Mr. Van Dyke — We do not propose to now prove that the fire originated in the cupola, but we will seek to show that the fire did not originate at, or first break out through the scuttle or the roof below the cupola.

Mr. Seward — That comes to the same point, for in order to show that it did not break out in the scuttle the witness must tell where it did break out. It was an affirmative fact to be proved by the prosecution, that the depot was burned, and burned not by accident, but by design; and they proceeded to show this, and the manner in which it was burned. In their opening, the counsel stated they would prove certain facts; that defendants got Gay to burn the depot, that he did so, and that the fire was not an accident occasioned by the machinery. By Phelps they proved the manner in which Gay burned, by placing the match in the cupola; by Turner and others, they showed the affirmative fact, that he saw the fire at its commencement, and that it was then in the cupola. We have not, on the defence, gone into any new point; we have merely sought to meet the affirmative fact sought to be proven by them, and to show that the fire did not originate in the cupola — of course we could not show this without showing where the fire was. Now, if they return to show in any manner that the fire was in the cupola, the proof will be cumulative; it will be a point upon which they have already given much evidence. If it was not to meet their case, why should we go to prove that the fire originated in the roof and not in the cupola.

After going over the arguments of counsel, the court decided that the testimony offered did not come under the rule cited by the defence, and that the testimony was admissible.

Mr. Seward noted an exception to the decision.

Mr. Fraser begs to call the attention of the court to some remarks made yesterday, in reference to his having required a witness to retire while his testimony was under discussion; it was said there was no rule for such a course, and he now begs to cite 34 Eng. C. L. 402. He does so, as he never intends to pursue any course that is not sustained by authorities.

Pat. Rowland — Am first assistant engineer of the fire department. Remember the fire at the depot; heard the alarm bell at one to two in the morning; went at once to the depot; very few persons, and no engine there when I arrived. It was my duty to locate the engines. I first saw the fire in the cupola; none then from any scuttle, or from the roof, but ten or fifteen minutes after, saw it break out of the scuttle near the cupola.

Cross-examined — I went to the fire from where I slept on Jefferson Avenue; first saw the fire from the street opposite the store where I slept; there I saw a very small light toward the depot, and I then

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thought it might be a vessel. Was down in front of the depot, when I ascertained that it was the depot that was on fire, on Woodbridge street, which runs on the north side of the depot. Can't tell the spot I was on; was between Johnson's Hotel and the depot; was on the crossing of Woodbridge and Third street. I wanted to see where the fire was, to take a position; the fire was in the cupola, and about the centre of it. I judge the fire began on the inside of the cupola; the fire then was about ten feet in size. I looked for nothing but the fire; do not recollect seeing smoke; it appeared a clear blaze.

I went down and looked from the dock at once after, and stood on the edge of the dock, opposite the cupola; saw no fire then on the south roof, and only a little of the fire in the cupola; then came back to the north side, and saw the fire from the scuttle, not far from the cupola. The fire from the scuttle blazed up about two feet; no engine had then arrived. At this time the doors were opened, and I went up as near the fire as I could; the fire was then burning on the floor I stood on, which was under the cupola. Had returned a second time to the river side, and went up to the fire on the river side. When I went up, the fire was in the cupola. Could not get up the cupola stairs. When I came down, I met engine number eight coming; I placed that engine on the river side, as near the cupola as I could. Number four came at once after number eight, and I placed it near number eight, but soon moved number four to the south-east corner of the depot.

To Mr. Van Dyke — Can not tell the precise spot where I first took a view of the fire, but remember the fact, and if fire was there from the scuttles I would see it. When I went into the depot, I went up two pair of stairs; the fire was then up in the cupola, and above me.

To Seward — I went up two flights of stairs. I went as far as I could up the stairs that circle round the cupola; these stairs were then partly burning.

To Van Arman — I could see far enough into the cupola to command a view of the fire.

Court adjourned to the 13th, at eight, A. M.

MORNING SESSION — 56TH DAY.

WEDNESDAY, August 13.

The sheriff reported to the court that, in consequence of a death in his family, one of the jurors would be unable to attend to-day.

Court adjourned to the 14th, at eight, A. M.

MORNING SESSION — 57TH DAY.

THURSDAY, August 14.

Mr. Hallock, one of the jurors, being sick and unable to attend, Mr. Van Arman stated that the prosecution were anxious to proceed, and would stipulate to take the testimony before the eleven remaining jurors,

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and to have it read to Mr. Hallock from the minutes of the court, whenever he was able to attend.

He also wished to correct a misunderstanding; he heard that there was a rumor that the prosecution were not ready to proceed on yesterday, but the prosecution were ready to proceed, and yesterday made the same proposition that he has now made.

Mr. Van Dyke, who, with the sheriff, called upon Mr. Hallock, states that he will be unable to attend to-day, but will probably be able to attend to-morrow.

Mr. Hewitt said he appeared for two of the defendants, and would waive none of their legal rights.

Mr. Seward said he had no control over the counsel who appeared separately for two of the defendants.

Mr. Hewitt said, when he signed any stipulation, it would be after this.

Court adjourned to the 15th, at eight, A. M.

Fitch and Gun being taken sick, and unable to appear, the court adjourned, from time to time, until the 27th. During the interim, both of these defendants died.

MORNING SESSION — 63D DAY.

WEDNESDAY, August 27.

Joseph E. Bebee — Have lived in Jackson about nine years; have been a contractor at the prison all that time, and usually spend half of each day there. I was there in September and August last. I know Justin Goodwin — he showed me a letter written to him, as he said, by Mr. Brooks. This was in August, and I think the first or second day after the Gazelle was run off. I did not read the letter; Goodwin explained to me what it was about.

Frink objects to his stating the conversation.

Witness — I told Goodwin if it was my letter, I would keep it secret. Goodwin said it was a letter requesting the absence of Westcott for a few weeks, as he wished to employ him to find out the depredators on the railroad. He said he had just received the letter; he handed me the letter to read, but I did not read it, as I presumed I knew the contents from his statement. I did not see Westcott there that day; he never again showed me the letter.

I was about the prison, and knew the keepers and persons round there, and Phelps while he was in prison. I do n't know that I ever spoke to Phelps there. I never heard anything against him save his being there. As far as I know, his reputation for truth and veracity was as good as that of any other man there; and from aught I know or heard, I would believe him as soon as any other man there.

While there, I heard of a revolving cannon; it was made by Houghton, something on the same principle as Colt's. My attention was called to it by Houghton and Titus. I never knew of Phelps having anything to do with it.

Cross-examined — Phelps was not on my contract in the prison. Never heard anything said either way about his truth and veracity. He was for awhile on Lathrop's contract.

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B. F. Bush — Live in Detroit, at Johnson's Hotel; boarded there at the time the depot was burned. That night I slept in the store, below Cass street. My attention was called to the fire by the bells. I got up and went to the depot; there were about a dozen persons, but no engine there when I arrived. I did not then see any fire in the scuttles. I went into the building, and up one flight of stairs, with Mr. Gilbert; from there I could see the fire distinctly, and it seemed confined to the north-east corner of the cupola. I did not then notice it below the cupola save a little way. It was then in extent from the north-east corner about ten feet west of the cupola, and was burning in that direction; nearly the half circle of the cupola was then on fire. The fire was confined to the lower timbers of the cupola. The fire was in a bright blaze, the blaze almost half the height of the cupola. I remained there from three to five minutes, and then went down to the west end of the depot to move the cars. From where I stood I thought I commanded a full view of the fire. Before I went in I saw the cupola was on fire. When I came round on the wharf, I saw a little blaze in the cupola, and no fire anywhere else.

Cross-examined — I slept about fifty rods from the cupola. Do n't know what the hour was. In going to the fire I passed Johnson's hotel; there were persons round in front of it. I ran as I passed Johnson's, and did not stop to notice the fire. I went on, without stopping, to the freight office. I went there to assist them; met Gilbert at the door, and he turned back with me to the depot. Before I met him, I got a glimpse of the fire, but did not stop to look at it. The stairs we went up are east of the freight office. I did not notice the stairs leading to the cupola. From where I stood, on the second floor, I do n't know if I could see the scuttle. The extent of the fire then was about ten feet down the north side of the cupola, and about six feet south from the north-east corner. The flame from the timbers ascended about half-way up the cupola. I was there about three quarters of an hour before the entire roof was in flame. I did not notice engines till we had to desist moving things out at the west end. Before I started from the store, I think I looked out of my rear window, and saw there was a fire some where down there, but could not locate it. I do n't recollect seeing the fire till I got to the wharf. Save in front of Johnson's, there was no place from which I could see it, till I got to the wharf. When I went on the wharf, I was near the river. When I was on the second floor, I was near the edge of the fire, as near as I could come to it, by reason of a portion of the second floor having broken down. This break in the floor had been occasioned, a few days before, by grain falling through. I was, perhaps, fifteen feet from the fire. The stairs ran from east to west.

Re-examined — Conductor Gilbert was with me. I was on the floor above the ground. I think the fire was a little below the ridge of the building. The flame extended about half-way up the cupola.

W. W. Green — Reside in Detroit. Lived there at the time of the fire; then lodged at Johnson's. Heard the alarm of fire, but no bells were then rung. I went to the sitting-room, on the second story, to see where the fire was, and saw it must be the depot or a vessel, but could not say which. I went out, and, from between Johnson's and the dock,

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I had the first view of the fire. It was then in the cupola; there was none in the roof. I was so situated, that, had there been any fire in the roof, I should have seen it. There was, at times, smoke, at other times, scarcely any. The base of the fire was below the ridge. I stayed on the dock the most of the time. Being anxious, I could not compute time well, but it seemed half an hour before any engines arrived, and, during this time, the fire progressed rapidly. The bells did not ring till after I got on the dock. The fire spread most quickly toward the east. I afterward saw the fire break out over the roof. As I passed to the dock, I had a view of the north roof, and am confident there was then no fire on that roof. When I got to the dock, I only saw one man, and he was standing near a sail vessel, as if hesitating about casting off his lines. I am confident that the fire at first was above the ridge. I saw no one up in Johnson's when I went up.

Cross-examined — Had boarded at Johnson's about a week, and remained some seven weeks after. My room was at the head of the first stairs, I think fifty or fifty-one. I was then in the employ of the company, and am now. I travel for the company. I had not undressed at the time I heard the alarm. I did not notice the hour, but looked at my watch after the fire had progressed some time. I think it broke out about three o'clock. The alarm I heard was given near Johnson's, but I can't say on what street. I did not see the fire from the sitting-room; from it I at once returned to my room, and then put on my boots and went out. I went out at the hall door; I think it was fastened, and I put back the bolt or unlocked it. I saw no one till I got out. The reason of my being up so late was, my family were sick. Mr. Johnson's room was on the same floor with mine. The vessel I spoke of lay near the east end of the wharf; there were other vessels below it, and I think a steamboat nearly opposite the cupola. I was near the upper end of the dock most of the time. The fire was principally on the north side of the cupola. I could see very plainly from the dock, that the cupola was on fire; it was burning pretty brightly when I got into the street. It may not have been half an hour before the engine came; I merely guess, and I was very anxious for them to come. Two or three came very nearly together. I am not positive, but think the fire had communicated with the roof before the first engine came. Can't state if I saw the north roof a second time until the whole roof was on fire. I can't state the spot I was in when I first saw the cupola was on fire. I was on the dock only a short time when the depot bell rung. Think it was on the 15th I began to board at Johnson's. I have seen the evidence given by the defence in relation to the fire. I do not say there was no person up in Johnson's when I went out; but I did not see or hear any one. I had been up equally late for nights before and after the fire; my wife was expecting to be confined.

To a Juror — It was a cry of fire that first called my attention; but there may have been a knocking at a door before the cry. I did not return to the house till the building was given up; then they were all up. The cupola could not be seen from the parlor window.

To Frink — I am not certain, but think it was the window fronting the door I looked out of.

C. Savinac — At the time of the fire, I lived on the front street, two

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hundred feet from the depot. I was at home and in bed that night. Capt. Turner knocked at the door, and said I was to get up, the depot was on fire. I at first thought he was joking, but I afterwards got up and hurried out. I was fireman of number one, and ran up Jefferson avenue till I met my engine, and returned with it. On our return with the engine, P. Rowland was on the corner, and told me to place myself on the dock. I had gone to the door before I dressed, and saw the fire in the cupola from there. I had a full view of the whole north roof, and there was then no fire there, the only trace of fire being in the cupola. I then dressed, and hurried up the avenue, as stated. At that time I saw no one but Turner. No bell had been rung at that time.

Cross-examined — I live on the north side of the front street. I saw the fire before I dressed, from the front of my house. It was then about twice the size of the court clock. I do n't remember which way I went to the avenue; do n't remember seeing the fire save from my door, as stated, till I was returning with the engine. I met my engine at Doty and Abbott's, on Woodward avenue.

Duncan Stewart — At the time of the fire I resided on Larned, between Cass and First streets. I was then superintendent of receiving and delivering freight in the depot. I was awake in bed, and heard the bell ring, got up, put on part of my clothes, and took the rest in my hand. As I got to my door, Pat McCue knocked at it, and said the depot was on fire. I ran down to the depot, dressing myself as I went. No engine was there when I arrived; the cupola was then blazing on the outside. It appeared all on fire, and the clapboards were burning, and the ridge and adjoining shingles just getting on fire. The fire seemed to proceed from the cupola.

The workmen in the bin used candles, in tin sconces. I was in the habit of going frequently about the bins at night, to see that my orders respecting lights were obeyed. I believe they were delivering wheat on the night of the fire. I never but once saw a candle fastened by grease to the wood. I went up as the man was doing it. I never knew of its being done but the once; I then stopped its being done.

I had the nails for the sconces placed myself, so as to be out of the way of danger, and the men were not allowed to hang the sconces on any other nails. When I got down that night, the men were all at work, and none were asleep in the pantry, or place where the men had beds to rest when waiting for the cars. Do n't know how long I was there before an engine came. I left the depot that night about eight, P. M. Do n't know if they were then elevating.

Cross-examined — From my house to the depot I went down Larned to First street, down First street to Jefferson avenue, down Jefferson avenue to Third street, and then to the depot wharf. Before going in, I looked to see how far the fire had got, and thought I had time enough to save my books, which were near to the freight office, and then went in for them. Do n't know when the engines got there.

It was up stairs, and a month or six weeks before the fire, I saw the man putting up the candle as stated. The stairs to the second floor went from east to west, and from twelve to fifteen feet from their head, the stairs to the cupola went the contrary way. I only guess at from twelve to fifteen feet; I am not a good judge of distances.

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The number of men who worked in the bins varied from two to six; sometime before the fire, a portion of the floor had broken down, but had been replaced.

Henry Ledyard — I was present, about two weeks since, at the house of Dr. Desnoyer, when one of the matches, similar to those produced heretofore, was placed on a pile of shavings, and lighted by a small ordinary match; after about forty-five minutes, the fire burst out at the end of the match, and set fire to the shavings, and would have set fire to the house against which the shavings were placed, had it not been put out by water. The match then used was similar to the one now shown. I do not know how it was prepared. It was lighted at the small touch-hole with an ordinary match. As it was lighted, I perceived there was a draft through the touch-hole through the block. I saw nothing external to produce the draft. After a little, all appearance of fire or smoke disappeared, and if I had not been aware of it, I would not notice there was any fire. As the fire burned through the tubes, there was no smell or sign of fire. One of the holes was covered with wax, and after the fire burned through, it melted, and camphene oozed through from the hole on to the shavings; Dr. Desnoyer was present. It was about forty-five minutes from the time it was lighted till it burned through and fired the shavings.

Cross-examined — It was in the evening, at Dr. Desnoyer's house, think last Wednesday week. Did not examine how the match was charged; do n't know what material was put in the tubes; the shavings were fine and dry, the match lay one end, raised on the shavings. A great part of the time we had supposed the match had gone out entirely. Do n't know what fluid was put in the tube, but it was covered with shoemaker's wax; all of the four holes were lighted. Do n't know, but think only two or three of the holes burned through. It was forty-five minutes in burning through.

Sylvester Larned — On a different evening from that mentioned by Mr. Ledyard, I was present at Dr. Desnoyer's house. Before the others who were to be present had arrived, Dr. Desnoyer, at my request, showed me the matches, and I examined them. They were, in construction, similar to this shown. The centre tube was covered with shoemaker's wax; it was placed on shavings inclined up; the shavings were dry. The match was lighted, and burned seven minutes, and most all the time emitted smoke. Dr. Desnoyer said it was prepared for a quick match, and it would burn almost ten minutes. A part of the time, while it burned, a little smoke came from the touch-hole, but the body of the smoke passed out through the other end; the fire, when it burned through, communicated to the shavings very readily. Mr. Van Dyke and Smart seemed timid, and afraid it would fire the house; the fire was put out by water. There was a second match also lighted, which the doctor said would burn about one hour; this was lying near the other. It was fired in two or three holes, and several times we had supposed it had gone out, as there was no smoke at all. At the end of about fifty minutes it burned through to the end, and emitted a very slight blaze, but the shavings did not take fire. Can't say that the shavings were wet, but I think they must have been wet by the water that put out the first match.

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Cross-examined — The centre of the first match was covered with wax; the second match was placed almost perpendicular. The doctor said he doubted if it would fire the shavings in that position, and it was lowered before it fired the shavings.

To Van Dyke — A second tube of the second match, burned through in an hour and ten minutes.

Witness here identifies the matches produced as the same used on the occasion referred to, being marked with his initials.

Mr. Ledyard recalled — Identifies a match produced as the one used on the occasion he testified to.

Doctor E. G. Desnoyer — The first thing I did was to make a solution of saltpetre. I tried camphene, but it would not answer. I made different solutions with saltpetre, and marked the different strengths of the solutions; used sheet cotton, as more easily dried. I charged different holes with different solutions, and marked the whole with the strength of the solution. I charged the tubes thus: put in a paper tube and the cotton all round it, and in the centre hole I put burning fluid, but camphene would have been better; I used the fluid, as I had no camphene at my house; camphene would answer better than the fluid; over the orifice I put shoemaker's wax; once I put a thin sheet of glue under the wax, and found that it resisted the action of the camphene better. I found that a solution of an ounce of saltpetre to a pint of water, would burn almost an hour. I prepared the cotton simply by steeping it in the solution and drying it; when thus prepared, the cotton showed no sign of preparation to the eye. I found that common brown paper answered best for the tube; I also found that, the tighter the cotton was pressed in, the slower the match burned. On experiment, I found that the shoemaker's wax, instead of melting away entirely, boiled like, so as to let the camphene filter through slowly until the shavings burned away from under the match, and let it fall horizontally, when the camphene run out quickly. I found no difficulty about a draft; found the draft was best when the match lay at an angle. I found it burned much better if the paper for the tube was also steeped in the solution; I also found that the paper tube should not extend down to the touch-hole. For the purposes of burning I could make no improvement, save to line the tube with metal to hold the camphene. I found, however, that it would hold the camphene if lined with glue; the way to line with glue, is simply to pour the glue in and out again. I had camphene in one so prepared, for twelve hours, without any apparent diminution; think so prepared it would hold camphene at least a week. If a match, prepared as I prepared those used, was in water all night, it would after show no sign of the preparation, either in the wood or the cotton; the glue and saltpetre would be extracted by the water. If camphene was poured round the touch-hole and fired, it would not show sign of fire in the tube.

The longest time I got one to burn was about one hour and a quarter; that one I supposed had gone out, and left it in my bedroom, but found after that it had burned through.

When the solution is weak, the cotton burned without smoke or noise. The common lucifer matches are excellent to place at the end to insure the shavings taking fire. There is no other material necessary save what I have mentioned. Brimstone alone would answer instead of matches.

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I found that the common materials I have mentioned were the best for every purpose. All the materials I used are common in drug stores in the country. I lighted the matches by an ordinary wax match; it could be done equally well with a piece of paper; the shavings used were dry. The last time, the block that is the most burned had no shavings round it when burned as it now is.

Cross-examined — I commenced my experiments before I was on the stand before. I did not succeed well till I had tried five or six experiments. To be certain of having the match go well, I would like to have an ounce to a pint; with two ounces it burned with a noise, a fizzing. I tried an experiment with a match lying flat; it burned more slowly so; think it would not thus be equally certain to burn, unless made stronger. The larger the tube in the paper is, other things being equal, the more rapidly it will burn. Cotton, so prepared, would burn, if laid out open and set fire to. If the match was put in a tight box, the cotton might burn, but it would not set fire to the shavings. I did not try to make it burn over an hour and fifteen minutes; did not push my experiments beyond that. The lucifer matches I used I placed in the cotton at the end of the tube, as it required flame to communicate fire to the camphene. I found the shoemaker's wax would not hold the camphene over about three hours without caving in; this was without the lining with glue. Varnish would not answer instead of glue; the camphene dissolves varnish, but not glue. I tried some experiments inside in my house, but outside, when I used the shavings. I tried one-fourth ounce to a pint, and found it burned slowly, and would be likely to go out often.

I think it might be made to burn three hours; water for one night would n't remove the varnish from the wood, but it would glue; with a very small paper tube, the smoke, if it lay horizontal, would be apt to come from the touch-hole. I do n't see how one could be made to burn forty-eight hours; I think to make one burn nine hours would be a doubtful experiment; I tried one with brimstone instead of matches, and it succeeded, but I preferred the matches. Tried one without either, and found it would n't light camphene; it needed something to produce a flame.

To Van Dyke — The advantage of the block is, it is a vehicle for the match, and gives draft. Could not now suggest any improvement to the match for the purpose. Have n't carried my experiments far enough to state how any thing might be made to burn.

To a Juror — At first I filled different tubes with different solutions; the lucifer matches I put protruding from the end. Could graduate the time within an hour, by the strength of the solution and tightness of packing in the cotton; without shavings, or paper, or something to give fire to melt the wax, the camphene would n't come out; shavings, being elastic, are the best.

August 27, P. M.

M. Howard Webster — Saw the experiments on the matches produced at the house of Dr. Desnoyer. The doctor had two matches, also a pile of shavings; the first match was lighted, and in about seven minutes it burned through, and set fire to the shavings and to the house;

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the second one burned much longer; it was seventy minutes before the fire burned through; it was standing upright, and when it burned through to the end, we set it down; after the second burned through, all the shavings were removed, and it continued to burn without shavings, for over three-quarters of an hour; while it was burning through, there was no indication whatever of fire, and we supposed it had gone out, but on feeling, found it hot.

Cross-examined — I did not examine or see matches at the end. After it had burned some time, we poured the camphene out of the holes, over which wax was placed; the matches were put out with water.

John Hosmer, of Detroit — Lived here when the depot was burned; was waked up by the bells; looked out of my window and saw the fire near the depot; was at the corner of First and La Fayette streets; went down, and the fire was then in the cupola; I first detected where the fire was, when I was on Congress street, between Second and Third streets; had a view of part of the north roof from where I stood. Saw the fire in the cupola; it was no where else when I arrived on the ground; the cupola was not much consumed at that time; I thought an engine could easily have put it out then, if one had been there, and with no injury to any thing but the cupola; if the fire had been coming out of the roof I should have seen it; could not have helped it; I did not watch the progress of the fire; went into the buildings after the books, &c.

Cross-examined by Frink — I boarded about a quarter or half of a mile from the depot; perhaps not so far; I was alarmed by the ringing of the bells of the depot, foundry, and engine number eight; went down the middle of Third street; was going fast, ran all the way; was running when I saw the fire from Congress street; did n't stop until I got into the freight office; think, but am not positive, that the fire appeared on the east side of the cupola, and nearly over the ridge; should think it was ten or fifteen feet above the ridge; there was considerable smoke, but a pretty large flame; three or four feet or more; saw only the one engine at that time.

Cornelius Oxford, of Detroit — Resided here the night the depot was burned. I was in bed, on Congress street, when I heard the alarm; think it was one or two in the morning. I heard the bell, and got up at once; my room commanded a view of part of the depot; I saw the flame from my window; it was then in the north side of the cupola, and as far as I saw, it was confined entirely to the cupola. I went down to the fire; very few persons there, and no engine that I saw. When I got down, the fire was still confined exclusively to the cupola; on my way to the depot, I had a view of the north roof; I saw fire in the cupola, but none in the roof; if any had been in the roof, I would have seen it.

Cross-examined — I was then weigh-master in the depot; when I got to the fire, I busied myself in saving the books. The house I occupied was about a hundred or a hundred and fifty rods from the depot. I went pretty fast, and did n't stop to look at the fire, but looked at it as I ran along; there was not then enough smoke in the cupola to conceal the flame; it did not extend all across the cupola; the flame was four to six feet high.

To Van Dyke — The flame came out of the window; from the cupola window; there was no fire from the scuttle windows.

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To Frink — The scuttle windows were not visible from my window.

Alexander McFarran — Lived in Detroit at the time depot was burned, on the corner of Congress and Second streets. The depot is on Third street; I heard persons call fire, and went to my door. I first looked toward my own store; I then looked toward the depot, and saw sparks and smoke; I hurried down to the depot; when crossing the street at Third street, I saw a man pass from Johnson's to the wharf; I tried to get into the depot, but the doors were locked; the fire was in the cupola on the north side; there was none coming out of the scuttles then, that I saw; I passed on to the river side; there also saw fire in the cupola, but not as much as on the north side. I afterwards returned again to the north side, and then fire was coming out of the roof; but for some time it was confined to the cupola. I thought if I could have got in at first, with six men, we could have put it out.

Cross-examined — I went on a run from my house to the depot. I noticed the fire on the way; at the corner of Jefferson avenue saw the fire in the cupola, also saw it from my own door; it was in the north part of cupola. I saw the bottom of the cupola, but can't say if the fire extended down to the bottom of it. The fire was bursting out on the side next me; on the north side and east side larger than the clock; there was some space between the top of the flame and ledge of the roof; not much smoke, some; not enough to obscure the flame. I went round to the river side of the depot, and endeavored to break into the freight office; I saw the fire up over me; can't say how high up it was; can't say whether it was above the windows in the roof or not; it was not as large on that side as on the other. I looked at the fire while I was passing from the passenger to the freight depot; the fire was then in the cupola. When I was at the corner of the avenue, I can't say that I did or did not see the scuttle of the cupola.

To Van Dyke — I can not state the exact spots where I stood, but remember distinctly what I saw.

Daniel Stewart — I saw the elevator at the time the depot was burned; was there when the work ceased the night before the fire; there was only one candle used there that night, and I put that one out about a quarter before twelve.

Cross-examined — That night we began to elevate after tea, I was up and down about the wheat bins; was not in the bins; the candle was at the head of the stairs. There were five bins on the second floor; there were no sconces or lights in the bins that night; there was no necessity for them; was up several times that night; the light was at the top of the bin, hung on a cross beam, and perhaps a foot above the level of the bin; the back of the bin was up to the roof. Can't say how high the front of the bin was, perhaps seventeen feet; the beam on which the light hung was about a foot square; that night we stopped work a quarter before twelve. There was but the one candle used there that night, a common tallow candle; that night elevated ten car-loads. Priest was the watchman that night. There were as many as eight men helping to shovel the wheat into the elevator from the cars; the elevator was on the south side of the cars; there were also men at work at flour on the lower floor; they did n't quit work as soon as I did. I suppose the watchman had charge of locking up.

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To Van Dyke — I was up to the bins several times; there was but the one light; did n't move it at all, and put it out before I left.

To a Juror — It hung on a beam, so that it gave sufficient light to all the bins; it was seventeen feet from the floor, and farther from the roof; there was a stair up to the top of the bins; there was no one else elevating wheat that night.

To Van Dyke — The door into the cupola was closed that night; do n't know if it was fastened.

Duncan Stewart — There never was a bale of cotton up stairs but once; there was a bale of wool and a bundle of sheep pelts near the stairs above.

Cross-examined — It remained, and I guess was burned there; it was put there till it would be claimed. It was six or eight feet from the stairs.

Charles Wood — At the time of the fire, lived on La Fayette street; was abed, and roused up; first saw the fire on my way to the depot; saw no fire save in the cupola; at the time I saw it in the cupola, I had a view of the most part of the north roof; then saw no fire save in the cupola; went into the depot; got on the wharf, then saw the whole south side of the roof, and no fire but in the cupola.

Cross-examined — I ran to the depot and made no stop on the way; went right to the freight office, and busied myself in saving the books; when I saw the fire, it was breaking out of the north end of the cupola; I passed an engine in front of the depot, but it was not at work.

P. C. Higgins — Saw the fire; was boarding on Fort street; was roused by the bell of No. 8; I ran to a window on the west end of the house, lifted the window, and looked out and saw the depot on fire; I then roused Mr. Hammond; then put on my morning gown and roused the rest of the family; after I heard the bell of No. 8, I heard the depot bell; when I saw the fire, it was breaking out of the north side of the cupola, and blazed up about two feet high; it then burned towards the east, and broke out of the scuttle, north-east of the cupola; am positive the fire appeared about two-thirds of the way up the cupola, before it came out of the scuttle.

Cross-examined — Could see the whole of the two sides of the cupola from the window from which I viewed the fire; when I first looked at it, I saw a gush of smoke, and almost simultaneously, a flame; I was in a sleep, but not a sound one, when I heard the bell; can't state certain, but it may have been six minutes before the entire cupola was on fire; the present cupola is in about the same position as the old one; I could see about fifty feet east of the cupola.

To a Juror — From where I took my position, after I dressed, I could see the roof down to the eaves.

L. Chapman, of Jackson — A lawyer by profession; know David Beeman; was in his lot south of Leoni two or three weeks ago; saw Beeman and his boy that day; from the road to the woods the plowed part of the field is thirty or forty rods; it lies east of the north and south road; the boy went with us, and pointed out some sticks that had been sawed there; there were bits of rails there; from there to the road is about forty rods; there is a little elevation, a ridge like, between there and the road; it was parallel to the road, and about twenty rods from

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the road; the boy, at our request, placed himself on the highest part of it, and about twenty rods from the road. I went from where the boy so stood to where the rail cuts were; there is no place between the two points but where a person could be plainly seen from either point; from the place where the rail cuts are, you can see a person in any part of the field, save near the road, between where the boy stood and the road. The distance was paced from where the boy stood to the rails; it is about twenty rods; there are no stumps, and no place where a person could hide himself between; there are some small bushes, but not enough to hide. A spot was marked and pointed out twenty rods north of where the boy stood; from this last point a person could be plainly seen anywhere between the summit of the ridge and the road; from this last point a person could be seen in any point of the field, save perhaps in the immediate north-west corner; between the summit of the hill and the north line of the lot there is nothing to intercept the view.

Some persons took pieces of wood, a foot or so long, in a red kerchief, and drove along in a wagon, and got out and took it out. I stood on the summit to watch. Could n't see it till he got it out of the wagon, but could n't tell anything of its shape or length. Could n't tell if it was six inches or a foot long; could n't, at the distance, judge of the size or shape. I was watching to see, as it was an experiment; could see the handkerchief was a reddish cast, but could n't tell if it was a box or a bundle. Could n't see him take anything out of the wagon, only saw that he went to the side of the wagon; can't tell now if he took it out behind or before the seat. Saw a wagon drive up the west road and back. I then stood about twenty rods north of the said summit, and about twenty rods from the road; as it passed the old house I could see the horses, then could n't see till it got to within eight or twelve rods of the corner, where I could see the top of the carriage for an instant, and then lost sight of it again till it got to the north and south road; could n't, from where I stood, distinguish or know any team; think a person watching a team closely along there, could scarcely tell if it was a load of rails or an empty wagon. From where I stood it was about forty or forty-five rods to the place on the west road, where the horses could be seen. The space through which you could see the horses near the old house was only about the horses' bodies. Could just get a glimpse of them as they passed.

When the man got out of the wagon I had to look very closely to notice if he took anything out of the wagon.

From the second point, north of the summit, could n't see as well where the wagon was placed, as from the summit; from the latter could only see the man's head and shoulders, and could n't tell if he took anything out of the wagon; from this latter point, after a man got into the field in the west side, I could n't see if he had a bundle under his arm at all.

I went up to Beeman's house, and the boy pointed out to us a small elevation between there and Leoni; the boy pointed out a place for us to stand, but I did n't see the wagon from there as I drove down the wagon. From the elevation I could not see Beeman's house; there are trees along the road. All I have testified to, is the result of experiments, tried on that day, for the purpose of ascertaining the results.

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Was at Phelps' house; there is no window on the side next the hovel.

Cross-examined — I do n't know that I am counsel in this case, but have been employed by the railroad company. I went down to Beeman's for the company. Mr. Spaulding and Samuel Higbee, Mr. Stewart, Van Arman, Phelps, and Chittenden were there; I think Mr. Chaffe was there; this was two weeks ago last Friday.

The one we were in had been a wheat field; a portion looked like new land, a portion looked as if a second crop had been had from it. The fence along the road did not at all impede the view of the buggy; the buggy stood eight or ten rods north of the fence, on the south line of the field; I do n't know who the man was who took the sticks out of the wagon; he had several sticks, so as to make a bundle.

There were trees between where I stood in the field, and the wagon on the west road; they had leaves on. I think, even if the trees were away, a wagon could not be seen on the west road, save near the old house; the wagon I saw driven down there, was one with a high top.

Harmon L. Spaulding — Went to Mr. Beeman's field, to examine it, thrice. The first time was the day after Secord was sworn. The second time was when the special train went with Governor Seward and others. I left the train with Phelps, and went on the route described by Phelps, and went to Beeman's field; went over the route described by Secord as the one he went over for the beetle and wedge.

The third time was on the day described by Chapman; young Beeman was present on the occasion. I had a covered buggy and two horses; the boy pointed out the points where he wanted the buggy stopped. There was a little swale north of where the buggy stopped in the road.

The last day I was there, I paced the distance from the place pointed out by young Beeman, to the place where the rail cuts were, and found it ninety-seven paces; the place where the latter were was also pointed out by the boy; a person could be seen all along between the two points, and from either point; the grubs are higher now than they were in the spring; the boy pointed out some grubs he cut in the spring; they were not in that part of the field.

The old gentleman pointed out a spot in the field; between it and the spot on the summit pointed out by the boy, there was nothing at all to intercept the view; a person on one spot could plainly see one on the other. After the boy had got the buggy placed in the road where he wished, we had a man take a bundle out of the buggy; could see him about the buggy, but could not see him take any thing out of it; but when he got near the fence, could see he had a bundle, but when he got into the field could not see if he had a bundle; from the spot pointed out by the old gentleman, I could not see if a man took any thing out of the buggy; could only see the top of the buggy; after the man got into the field could not see if he had any thing under his arm; could only see his head and the upper part of his person; coming from the rail cuts to the spot designated by the old man, you could not see the buggy prior to its coming to or near where we located it, and then could only see its top; could not see it all till arriving at the spot he pointed out, as up to then the summit would intercept the view; coming from the rail cuts to the summit, where the old man pointed out, you could see a buggy till you got to where he pointed out.

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Mr. Chapman got over the fence where the buggy stood, and went across where the old house is, and drove along the road to the corners, and for the fore part of the way I could see him, but for about two-thirds of the way I could n't see him.

A wagon was driven up the west road; I stood where the old man located us; as it passed near the old house I could get a glimpse of it, but could not tell horses from oxen till it got to the north and south road. I went to Beeman's house and stood on a spot designated by the boy, and saw an elevation between there and Leoni; a wagon was driven along; could see something passing there, but could n't from the distance and the make of the land, tell if it was one or two teams, or what it was; could merely see there was something; the leaves on the trees made no difference; could n't tell one team from another; the elevation was pointed out by the boy; it was the only point, between the house and Leoni, where any thing could be seen; we stood where the old man placed us in the field, and had one of our company go back and forth in the field west of the road, but could n't distinguish which of our company it was.

Cross-examined—I went one day with Phelps over the route he stated, in his testimony, he took. From Beeman's house I could n't, on the elevation between there and Leoni, tell a man on horseback from one in a buggy; the distance is about eighty rods; there is an intermediate rise about half way; on the second rise the space on which you can see is very small; not big enough to see an entire team at once; it was the second rise that the boy pointed out to us; the first can not be seen at all from the house; it was my team that was driven down, but I could not from the house know it was mine; one of the jurors was along that day.

Court adjourned to 28th, at eight A. M.

AUGUST 28th.

Dr. King—Reside in Dexter, and am now engaged in mercantile business, and have been for four years. I lived about one year at Manchester, and was there engaged in similar business. Knew Phelps in 1843, and have known him since. I was generally acquainted round Manchester, and had means of knowing his reputation there; good; would believe him, &c.

Cross-examined—I speak of his reputation round Manchester in 1843. He then lived in Sharon, five or six miles from Manchester. I was perhaps not acquainted with the immediate neighbors. I do not recollect his reputation for truth and veracity ever being called in question in Manchester. Have known him for the last year and a half. Knew some, but perhaps not the majority, of his neighbors in that time. I live now seventeen miles from his place.

To Van Dyke—Both at Dexter and Manchester, I have seen in my store many of the most prominent persons from his neighborhood.

Dr. A. Ewing—Reside in Dexter; have lived there four years. Am a physician, and also engaged in mercantile business. Also pursued my profession in Manchester and Lima Centre. I first knew Phelps, while

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he lived in Oakland; I was attending at his father-in law's. My business carried me into the Metcalf neighborhood. Have the means of knowing his reputation prior to these trials, and never heard his truth and veracity questioned; good, would believe him, &c. What I have heard lately, was called out by this trial.

Cross-examined—I lived in Manchester nearly three years from March, 1844. Went to Manchester from Lima; lived in Lima four years. Knew Phelps while I lived in Lima; when I lived in Manchester he lived in Sharon. I was not much acquainted with his immediate neighbors in Sharon. In Manchester, I have heard persons speak of his character; heard Barnabas Case speak of his general character. Do n't know I ever heard his truth spoken of before the arrests. Since, people seem divided about it. It is from never having heard it questioned, that I believed it good.

Albert Walcott — Reside in Detroit. While Phelps was in prison I was a contractor; was there when he went to prison. I inquired as to his general character. I never heard his truth and veracity called in question. I think he worked on my contract. I sold out to Lathrop; but remained in another department. I had an opportunity of knowing the estimate of his truth and veracity among the keepers; good, would believe him, &c.

Cross-examined—I went there in 1842; sold out to Lathrop in 1845; but Lathrop was interested before I sold out to him. I never spoke with any of the keepers or contractors specially of his truth; can't say it was ever spoken of. I base my opinion upon what I learned generally of his character there, and never having heard his truth questioned. I had two contracts there, one in the furnace business, in which I continued till November, 1845.

To Van Dyke — If anything had been said against his truth, I had the opportunity of hearing it.

Asa Williams — Live at Lima; have resided there eighteen or twenty years; have been a representative from there. Have known Phelps eight or ten years. I was considerably acquainted in the neighborhood in which he lived; heard him a good deal spoken of, but never heard his truth questioned; would believe him, &c.

Cross-examined—I do n't know his present reputation in his late residence. I live ten miles from the Metcalf place, and half a mile from Lima Centre. Some years ago, I used to do business with Sylvan people. I speak of his reputation among the circle of my acquaintance; have only heard it questioned in one instance since the arrests.

To Stuart — If his reputation had been bad, I would be likely to have heard of it.

To Frink — Since the arrests, I have not been in his neighborhood. Have heard one person say he would n't believe him under oath; only one; but heard others speak of him since the arrests.

T. Alexander — Have lived in Dexter since '44; have been an officer seven years. I know Phelps, and his reputation for truth and veracity in the neighborhood where he resided. It is good so far as I know; never heard anything said against it before the trial; would believe him under oath.

Cross-examined—I live sixteen miles from Metcalf. I have been

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constable and deputy sheriff. Do n't know where Phelps lived from 1846 to '49; never heard any one speak of his truth. I mean of my own knowledge, I did n't know where he lived, but knew it from others. At one time, his brother told me he lived in Sylvan. It was in the last spring I saw his brother. Have heard a number speak of his truth in Sylvan and Dexter since the arrests; the sentiment appeared divided. Was last in Sylvan, four weeks ago.

To Stuart — My business frequently took me to Sylvan. Knew his reputation where he lived. When constable, I was in the habit of collecting executions, and that frequently brought me in contact with people from his town. It is from knowledge thus acquired I testify.

William S. Martin — Reside in Dexter; have lived there since '37. Have known Phelps for the last two years. I have some, but not a very general acquaintance in Sylvan; know several in that town. The first two or three times I was in his neighborhood, I heard nothing said against his truth and veracity, but heard persons speak of him. I was in his neighborhood, and he was the subject of conversation, and I heard nothing said against his truth. I would believe him under oath.

Cross-examined — I spoke with Godfrey about him, also with the family of Rouse Lemn, about harvest time, in '49. I was there a second and a third time this last spring. There was nothing said for or against his character till the last time, when I heard it spoken against. He lived near the Metcalf place, or on it. The second time I was there he was spoken of, but his reputation was not spoken of.

A. Harlow — Live at Sylvan; have lived there for the last two years; also lived there at a previous period; have known Phelps nearly two years; am acquainted at Sylvan Centre; never heard anything against his truth, prior to the trials; it was good, for all I know. I had an opportunity of knowing his reputation for veracity; would believe him under oath.

Cross-examined — For the last year or two, I lived three miles from Phelps. Was acquainted with some, but not the majority of his immediate neighborhood. I don't know that I have heard his truth and veracity spoken of since the trials. I think at present some would say it was good, and some bad. Last summer, I kept a tavern at Sylvan; now work in a wagon shop. Never was at Phelps', or Metcalf's, or at any house in that neighborhood.

To Stuart — I know most of those who have testified for the defence, as to his reputation. I think, at least by sight, I know pretty much every one in the township.

Uriah Shuter — Live at Dexter; have lived there two years; before then, lived in Lima; have done a good deal of business in Sylvan. Have known Phelps about ten years; know his reputation for truth and veracity; never heard it questioned till these arrests. I was a constable, and thus had a general acquaintance through Sylvan, also mixed in politics; would believe him under oath.

Cross-examined — Lived twelve years in Lima. First knew Phelps in 1839, or '40, in Sylvan, but do n't know where he then lived. I was constable in 1841 and '42. I was constable two years, I think, in 1841 and '42, but it may have been later. Am a blacksmith. Do not recollect ever hearing his truth called in question, or spoken of. Never was

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at his house, and was not very intimate with his immediate neighbors. Have seen him often, since he came from prison; do n't know that I have heard him spoken of in Dexter; he had been often in Dexter.

Lyman Kellogg — Live at Lima Centre; have lived there seventeen years; have known Phelps eight or nine years. Know his reputation for truth and veracity; good, would believe him under oath.

Cross-examined — Live about nine miles from where Phelps has lived. I speak of his reputation in my neighborhood and his, so far as I know. I am a mason; worked in his neighborhood three years ago; then heard him spoken of, but nothing against him. Noah Phelps spoke of him. I have worked in that neighborhood since then. I worked about Sylvan Centre, two years ago, from five to eight days, but can't be certain who for; worked for a farmer, at mason-work, laying a cellar wall; north of Sylvan Centre, I worked for Mr. Becker; laid a wall for him, but am not certain when. Am not positive that I worked there precisely two years ago; not positive I worked there since Phelps came out of prison. I saw him at Noah Phelps' house a little over two years ago. Phelps has lived lately near Metcalf place. I know Metcalf, also Fisher, who lives near there. Have seen Fisher since Phelps came from prison, and several of the neighbors, but had no particular conversation with them. I know Hecock, who lives near Metcalf. Do not know that I ever heard any of these speak in particular of Phelps. Know Stow, of that neighborhood.

To Stuart — I know Riggs, Conklin, Godfrey, Beeker, and Burchard, I supposed, before I was confined to the very immediate neighborhood. I had a horse stolen, and I got Phelps to look it up with me.

Eldridge Cooper — Live at Lima; have lived there eighteen years, and have known Phelps twelve years. Am acquainted in most parts of Sylvan. Know Phelps' reputation, and have heard him spoken of before this suit. Never heard his truth questioned before the arrests. Would believe him, &c.

Cross-examined— I live seven or eight miles from his late residence; have known Phelps by hearing him spoken of, but did not know him personally till last spring. Before he went, and after he came from prison, I have heard my neighbors speak of him. I frequently pass through Sylvan, and am some acquainted with the people, but not particularly with those about Metcalf's. He has not been in my neighborhood since the trials commenced. I saw him before the arrests. I have heard him spoken of in the east part of Sylvan and Lima, and speak of those neighborhoods.

J. Litchfield — Live at Dexter; have lived there eight years; came there from Lima. I have known Phelps ten years or so. I was acquainted in the neighborhood where he lived, some eight years ago. Would believe him, &c.

Cross-examined — I lived at Lima, had a saw-mill, and was in the lime-burning business, and Phelps then lived in Sharon, some five miles from me. Was frequently in his neighborhood, and among his neighbors. Never heard his truth questioned, and therefore suppose it was good.

J. D. Irish — Live at Ann Arbor; have lived there seventeen years. Know Phelps and his reputation where he is known — good — and I would believe him, &c.

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Cross-examined — For the last two or three years he is known in Sylvan and Sharon. Have often seen him in Sylvan Centre, but not since he came from prison. I am well acquainted about Sylvan Centre. Know the majority there; was there a year ago last spring; up to then, was generally there four or five times a year. Have not heard him spoken of since he came from prison in Sylvan. I never was at Metcalf's. I heard Godfrey speak of Phelps in '42 or '43. He said he was a pretty good pettifogger; said nothing for or against his character. Heard Lord, of Sharon, say about the same. In Sharon and Sylvan I have often stopped some hours, as I passed through, on business.

Peter Stingolon — Live at Ann Arbor; am a blacksmith, and was sheriff of the county. Was some acquainted in Sylvan. I knew Phelps in '42 and '43; then knew his reputation for truth and veracity — good — I would believe him, &c. Since he came from prison, I heard nothing of him till this suit.

Cross-examined — Was sheriff in '43 and '44. He then lived in Sylvan. He used to be in the conventions from his section. Do n't know that I knew the majority where he lived, in Sharon and Sylvan. Do n't know what the majority in his neighborhood said of him.

Chester Palmer, of Lima — A farmer. Has been justice of the peace. Has lived there fifteen years. Known Phelps ten years. Know his reputation; good; would believe, &c.

Cross-examined — Speak of his reputation in Lima and the eastern part of Sylvan. Ten years ago he lived in Sharon or Sylvan, as I heard. Never was at his house. Do n't know what his immediate neighbors said of him.

John Depew, of Sylvan — A farmer. Known Phelps since he first came to Sylvan; know his reputation previous to the arrests. Never, till this suit, heard his truth questioned. Would not hesitate to believe, &c.

Cross-examined — Live about five miles from the Metcalf place, and about six miles from where Phelps lived in Sharon. Never made any inquiries about his truth, but have had conversations with his neighbors about him; was in the habit of frequently seeing his immediate neighbors. In Sharon, Bell was one of his neighbors; know a good many in Sharon, but not most of his neighbors. In Sylvan I knew N. Phelps, P. Riggs, Metcalf, and Reynolds; heard none of these speak of his truth, never heard his truth questioned before the arrests.

John Kellogg — Has lived seventeen or eighteen years in Lima; know Phelps and his reputation there; good; would believe, &c.

Cross-examined — Never heard his truth questioned in Lima or Sylvan; he lived in Sylvan, west of the Centre; have been in his neighborhood, but do not know that I stopped at any of his neighbors; never inquired or heard anything about his reputation. Since the arrests, have heard persons speak for and against his truth; have known Phelps eight or ten years; am aged twenty-three years.

To Stuart — Have a general acquaintance of all, through there.

To Howard — Know all the Phelps', and many others about the Metcalf place. Know Metcalf and all the Riggs'. Know others, but can't now name them. Heard persons in that neighborhood speak of Phelps before the arrests.

To Stuart — Know Beeker, Burchard, and several others.

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Lewis Randall, of Lima — Has lived there fourteen years; have known Phelps eight or ten years; never heard his truth questioned till these arrests; would believe, &c.

Cross-examined — When I first knew him he lived in the south-west of Sylvan; was n't there much in his neighborhood, and had n't much business with his neighbors; do n't know personally where he has lived since he came from prison; heard none of his neighbors speak of him before the arrests, but since then heard Wynans and Conklin speak well of his truth; never heard his truth questioned till the arrests.

Samuel G. Sutherland, of Ann Arbor — Has lived there twenty-three years; have known Phelps since 1842; never heard his truth questioned till the arrests. In '43 I did some work for him, gave credit, and he desired me to ask if he was good, and I inquired of his neighbors if he would do as he agreed; would believe, &c.

Cross-examined — I asked Alanson Case there about him; he said he would do as he agreed.

Edwin Lawrence, of Ann Arbor — Lived there fifteen years; by profession am a lawyer, and have held public offices; have had business, and am some acquainted in every town in the county; known Phelps eight or ten years; and have had business for persons where he acted as attorney against them. Am some acquainted about Sylvan Centre and Metcalf place; have frequently, several years ago, heard Phelps spoken of by the people in these neighborhoods; before he went to prison I never heard his truth questioned, nor since his return till these arrests; up to the time of this trial, from my knowledge of his reputation for truth and veracity, would believe him under oath. Am now county judge.

Cross-examined — I do n't know how many persons live in his neighborhood; therefore can't say if I knew a majority, but have heard several from there speak of Phelps. Never heard his truth spoken of till these arrests.

E. Sprague, of Ann Arbor — Has lived there for two years; previously lived in Saline. Knew Phelps when he lived in Sharon. Once had occasion to investigate as to his reputation. Inquired of a Mr. Smith, also of Henry E. Francisco. Recollect these two distinctly, from inquiries then made. Think I learned his reputation; it was represented good, and I would believe him, &c. This was in 1844. The reason of my inquiries was, I was applied to to give him a military commission.

Cross-examined — My object was to find if he could be relied upon as to statements he would make, and if he was suitable for the commission. Smith lived in Sharon; also inquired of Mr. Gillett, of Sharon. It was the young Francisco I inquired of — he said he (Phelps) was a man to be relied upon. Told Francisco my object. Gave Phelps the commission.

H. H. Bingham, of Grass Lake — Has lived there since 1843. Know Mr. Burnett, and also Mr. Lappen, of Sylvan. Remember Burnett coming out home a little before the block was found at Phelps' house. Burnett came home Friday, and the block was found the next Tuesday or Wednesday. Heard Burnett speak of the trial before the block was found. Saw him and Lappen talking alone first near Hale's fence, and a little after Burnett said that he had told Lappen to go and search about Phelps' premises, and that he knew he would find something by

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which they could prove that Phelps made the match. After the block was said to have been found, heard Burnett say the block had been found; he described it, and said he had done enough, and could now go back to jail. This last was in Hale's store. Do n't know if Burnett's wife was sick at this time. On the Sunday before the match was found, I saw him pass in a buggy with a lady I supposed his wife. Went with Chapman, Stuart, Clark, Spaulding, *et al.*, to examine Beeman's field, south of his house and east of the road. I think the field is forty or fifty rods deep from the road. Remember his boy pointing out a spot on the summit, and then he took the others back to some rail cuts, and I stood on the spot on the summit. Could see him plain all the way to rail cuts. No place between where he could hide, unless he lay down. Old Burnett also pointed out a spot about twenty rods north of the spot on the summit, and twenty rods from the road; persons on these spots could see each other plainly; looking round could not avoid seeing each other. The elevation is irregular, and is the only elevation in the entire field.

Coming from the rail cuts to where the old man pointed out, there was no place where the boy would not be visible on the spot he pointed out on the summit.

A man going from the rail cuts to where the old man pointed out, would be prevented by the rise from seeing a wagon coming from the south, till he got about to the spot where the old man pointed out. A wagon, where the buggy was placed in the road, could not be seen till he got to the point where the old man pointed out, and then could only see the top of the buggy, and the shoulders of a man standing by it, but could not see low enough to tell if he took anything out of the buggy.

A team with covered buggy was driven up and down the west road, and stood on the point selected by the old man; could only get a glimpse of the buggy — the top of it; not enough to tell the loading, or the kind of team.

I went to Bennett's house; the boy pointed out a spot, and also an elevation between there and Leoni; this was the only spot where we got a view of the road. A buggy was driven down, and also a man on horseback: without my prior knowledge, I could not, from the slight view I got of them, distinguish one from the other. The view is interrupted partly by the nature of the road, and some big trees.

Cross-examined — I am not in the employ of the railroad company; I am not seeking employment from them. I saw Burnett at church, the Sunday he was home; saw him pass to church with, I think, his wife; there were several, I don't remember who, when Burnett first spoke of the search; he then expressed a conviction that Phelps had made the matches, and if the search was made he knew he would find something. The second conversation was the day he returned here, and I think the Wednesday or Thursday before the 4th of July. I heard him without difficulty; he spoke aloud.

I think it was Saturday we were at Beeman's; two or three went down to the rail cuts, the rest stood on the summit; at the time the carriage was driven up and down the west road, I stood with others on the spot pointed out by the old man; stood in the same place when the man took

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a bundle out of the wagon. As the sun struck the buggy, I could see the bundle was reddish. It was taken from a covered buggy.

There are trees along the road to Leoni, but I am not positive that there are any close to the road between Beeman's and the elevation.

When the bundle was taken out of the buggy, it was about twenty rods north of the woods.

There is a grave-yard between Beeman's and Leoni, and north of the elevation, I think. Beeman's house is twenty or thirty rods north of the west road. There are two causeways between Beeman's and the elevation.

Wm. Wycoff — Know Burnett. Remember his being home at the time the block was found on Phelps' premises. I heard him, I think, previous to the finding of the block. He said, the counsel for the defence felt somewhat discouraged, that he had told them they need not fear; he was satisfied the making of the match would be proved on to Phelps. Subsequently, I heard him say, that he had accomplished what he came home for, and was ready to go back. There were several round; Allen, Smith, Corwin, and several others were there. Do n't remember that he used the word jail.

Cross-examined — The first conversation was in Allen's recess. He spoke loud, and several were present. I think the second conversation was also in the recess; am not certain. Beeman lives about a mile west of Grass Lake Depot.

AUGUST 28, P. M.

Giles Bloomfield, of Jackson — Has lived there eighteen months. Have been in the state prison part of the time. Inspector at the time Clark was there; in these capacities while Phelps was there; and there had an opportunity of knowing his reputation. Had no reason for not believing him, &c. I was, during the time, acquainted with the keepers, &c. Goodwin was agent part of the time. I was there when Goodwin had a letter from Brooks; while I was there, he either handed it to me to read, or I found it on the table and read it.

Cross-examined — I was appointed inspector in February, 1848, then lived seven miles west of Jackson. I was there only to the meetings of inspectors, which were once or twice a month, and lasted one to three days. Think it was about July, 1850, Goodwin received the letter; not sure that any one but Goodwin was present when I saw the letter; think I came in, and he mentioned having the letter, and handed it to me or read it to me.

To Van Dyke — While clerk, my duties kept me there all the time. I was clerk part of the time while Phelps was there.

Samuel Clements, of Lima — Has lived there twenty-five years; a farmer, and well acquainted through the town. Knew Phelps in 1840. My son kept public house, and I used to see Phelps there. I was pretty well acquainted with him, and have seen him occasionally in Lima. I never heard anything against his truth, unless his being sent to state prison. Never heard aught against his truth in the neighborhoood; had the means of knowing his reputation; would believe him, &c.

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Cross-examined — Phelps never lived in Lima. All I knew of him was, he used to be through and stop at my son's tavern, and I never heard anything against his truth and veracity. I live ten or twelve miles from Metcalf's. Think in 1840, Phelps lived in Sylvan.

To Van Dyke — I never saw him since he went to prison till these trials.

William Preston — Live in Freedom, Washtenaw county. Known Phelps ten years or so. At first, he lived in Sharon, and I lived seven miles from him, and was acquainted among his neighbors. Knew him when he lived in Sylvan; he was then ten miles from me, and I knew some of his neighbors. I have lived there eighteen years. Knew most of his neighbors in Sharon. Often heard him spoken of. Knew his reputation — good; would believe, &c.

Cross-examined — Never heard his character called in question for truth, never inquired about it, but often heard him spoken of. He lived in Sharon some ten years since; think he lived in Sharon till he went to prison.

To Van Dyke — Often heard his neighbors speak of him, but never of his truth.

William Madison, of Dexter — Has lived there since April. Before that lived in the town north of Jackson. Did not personally know Phelps till after the arrests. I am a Baptist minister. Three years ago, I was among those who knew Phelps, and heard him frequently spoken of; had an opportunity of knowing his reputation there; never heard anything against his truth; would believe him, &c.

Cross-examined — Moved to the town of Rives, about three years ago. Henry Phelps is the one I speak of; he was said to be in prison for stealing a horse. I heard Esquire Irish speak of him, he was saying he thought he went to prison unjustly. Also heard William Whiting speak of him.

To Van Dyke — My pastoral duties took me through Jackson, Rives, and Leoni, and brought me in connection with many persons.

To Frink — Those I have mentioned as speaking of Phelps, lived in Rives.

A. D. Crane, of Dexter — Has resided there since 1830. Am an attorney and counselor; am also brigadier general, and in these capacities had considerable acquaintance in several towns round there. Knew Phelps when he lived in Sylvan, and knew a great many of the people of Sylvan; they generally did business in Dexter. Heard Phelps frequently spoken of; never heard anything said against his truth and veracity; have no reason why I should not believe him under oath.

Cross-examined — Can't say I know anything about his reputation, in his immediate neighborhood; the reputation I speak of, I gathered more at Dexter than anywhere else.

To Van Dyke — I have been postmaster and justice of the peace.

Nathan Pierce, of Marengo, Calhoun county — Lived there seven years; previous to that, lived twelve years in Sylvan; knew Phelps while in Sylvan, and was acquainted in his neighborhood, and had means of knowing his reputation; never heard it questioned; would n't hesitate to believe him under oath. Held several township offices.

Cross-examined — Think I left Sylvan the summer before Phelps

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went to prison; there I lived six or seven miles from Phelps. He was often called and sworn as a witness, and heard him used as witness, but never heard his truth questioned. I know his immediate neighbors; have met him occasionally since I left there, but that is all I know of him since. He supported the Democratic party.

To Van Dyke — What I meant by saying he was used as a witness is, he was often called as a witness, to my knowledge, and his truth never questioned.

Charles Millard, Dexter — Lived there since 1836. Was a merchant at Manchester, from 1842 to 1844; also sell goods at Dexter, and buy wheat through that country. First knew Phelps in 1843, at Manchester; he then lived in Sharon, and I knew his neighbors; also, have often seen him at Dexter, and he has done a good deal of business there with me; know his reputation now, and for some time past, at Dexter: good; would believe, &c. While at Manchester, often talked with his neighbors, and never heard his truth questioned.

Cross-examined — Think he is known to a fair portion of the people at Dexter; can't say he is to the majority; do n't know what the majority of his neighbors at Sharon said of him.

Dr. Dorolman, of Dexter — Before coming to Dexter, lived two years at Lima; knew Phelps while I was at Lima; he then lived near Metcalf's. My practice extended into that neighborhood; I was also a local Methodist preacher, and sometimes preached in Sylvan; last summer and the summer before, I was in Sylvan, and had an opportunity of knowing his reputation; good; would believe him under oath.

Cross-examined — Once practiced medicine in Howell; was licensed to preach before I studied medicine; have attended as physician at four houses in the Metcalf neighborhood — young Metcalf's, H. Phelps', Nautting's and Reynolds'; do n't know that I visited any other families in that neighborhood. Preached there five or six times in the schoolhouse, and always stopped with Metcalf. Did n't then speak with any one about his truth and veracity; have the same means of knowing his reputation as I have of any other person in the three towns where I am acquainted, by means of my general intercourse with the people. Have met Phelps at several places. Know that once or twice I made some inquiries about him, but can't state who it was I inquired of.

To Van Dyke — Form my opinion because I have known those who have known him, and never heard anything against his truth.

Mallon Wines, of Sylvan — Lived there seventeen years; am a farmer and mechanic; was justice of the peace under the first election, and was often elected since; knew Phelps in Sylvan, and knew most of his neighbors; well known through the town; sometimes thought I knew every man in the town; supposed his reputation for truth good; never heard it questioned till these arrests; would believe him under oath. Lived about nine miles from him.

Cross-examined — He used to practice in my court; also knew him as a politician. Have heard persons speak of him; heard his character spoken of at the time he was sent to prison. Have often been to the neighborhood, but not his immediate neighborhood, since he came from prison. Since the arrests, have heard many say they would not believe him. Knew him also when he lived in Sharon.

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Joel Boynton, of Sylvan — Has lived there seventeen years. A farmer, also a local Methodist minister. Am well acquainted in the town. Am also supervisor. For three years have been at least once a year in every house in the town. Have known Phelps ten years. Never heard his truth questioned till these trials. Would believe him under oath.

Cross-examined — He at times attended my ministrations. Have been assessor for the last three years. Never made inquiries as to his character. Have not been in his immediate neighborhood since last April.

Calvin Chipman, of Lima — Has lived there since 1832. A farmer and blacksmith; has been justice of the peace. Knew Phelps first in 1842 or 1843. Knew him first in Sylvan, near Powell's, and also when he lived near Metcalf's. Knew his neighbors in both places; often met him in trying suits. Knew his reputation; good; would believe, &c.

Cross-examined — Have quit the practice of law for two or three years, but since then have been in Phelps' neighborhood on other business. Never heard or made any inquiries about his truth. Never heard anything about it.

Jacob Preston, of Freedom, Washtenaw county — Has lived there eighteen years; a farmer; was county surveyor for two years, about 1842 and '43. Know Phelps; first saw him six or seven years ago; often saw him since; when he lived in Sylvan often saw a number of his neighbors, and had an opportunity of knowing his reputation. Heard many things about him, but previous to this suit never heard his truth questioned, and would believe, &c.

Cross-examined — Lived about eight miles from him. Knew a majority of his neighbors, and heard several of them speak of him, but not of his truth; never made inquiries, or heard his truth questioned. Live about twelve miles from where he lived lately in Sylvan. Have heard his truth spoken of since these arrests.

Charles M. Duran, of Sylvan — Has lived there seven years; a farmer; have known Phelps personally since last September. Knew him by reputation before that; that is, I heard of him before. Know his neighbors and his reputation for truth — good; would believe, &c.

Cross-examined — Know Metcalf, Phelps, Conklin, Hecocks, and Francisco when I see them. Never heard his truth questioned, and it is from this I believe it good. Live about eight miles from where Phelps lived.

To Van Dyke — Have been a good deal through that neighborhood.

Stephen Tucker, of Freedom, Washtenaw county — Has lived there eleven years; a farmer. Knew Phelps first eight years ago; first saw him at a lawsuit. Do n't recollect ever being in the neighborhood where he lived. Phelps used to be at Freedom. Have seen him at suits, where the people were gathered; never heard his truth questioned till these trials; would believe, &c.

Cross-examined — Never inquired as to his character, and do n't know what reputation his immediate neighbors give him.

J. R. McLean, of Freedom — Has lived there fifteen years; a farmer; do n't know Phelps by sight. Know his neighbors in Sharon, where he

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once resided. Had the means then of knowing his reputation there for truth. Never heard it questioned; would believe, &c.

Cross-examined — This was eight or nine years ago; I then, and now live about seven miles from where he lived in Sharon. Had no business with him, and never inquired about his character; never heard his truth discussed.

To Van Dyke — Knew persons that knew him; heard them speak of him, but not of his truth.

Burr Gould, Sharon — Lived there eleven years; am a farmer; have known Phelps; knew him and some of his neighbors where he lived in Sharon; was postmaster and justice of the peace; knew people all over the town; never heard anything said against his truth; would n't hesitate to believe, &c.

Cross-examined — Lived five or six miles from Phelps; was postmaster four years. Can't say I was acquainted with all, but was with a good many of his neighbors. Irwin was one of his neighbors. Never heard him speak of his truth; heard Conklin say he was a pretty nice man; I inquired what kind of a man he was when he was at Sharon, and heard he was a nice, accurate man; I came to the state eleven years ago; think Phelps was then living in Sharon, and think he lived there when he was arrested.

THURSDAY AFTERNOON — (CONCLUDED.)

N. Noble — Live at Dexter; have lived there twenty-seven years. Am well acquainted in Dexter, and some in Sylvan and Sharon, and have known a good many who live in these towns; have heard Phelps was living there. Heard a great many say where he lived, and that they knew him. I have known business men and others, before the arrests, speak well of him. Since the trials, some have spoken ill of h m. Would believe, &c.

Cross-examined — Since the trials, I have known his reputation spoken against, but not before; I made no inquiries. I can't tell who were his neighbors, but I know Downer, Conklin and others f om Sylvan. I am not acquainted where he lives; I speak of my own neighborhood, and what I know from meeting people from Sylvan and round.

Elder Spencer — Live at Sylvan; have lived seven years there. I know Phelps; he lived six or seven miles from me; know some of his neighbors. I had the means of knowing his reputation, and never heard his truth questioned. Would believe him, &c. Also, knew him when he lived in Sharon. I then lived two or three miles from him.

Cross-examined — I can't say I know what a majority of his neighbors say about his truth; have not talked with any of them about it. I know Chapman, Powell, Metcalf and sons, the Franciscoes, and most of the inhabitants in that neighborhood. Know Bell, Chapman, Powell, and Raymond, of Sharon. I never had business with Phelps, or occasion to inquire as to his truth.

William F. Tracey — I live at Lima, and have been a justice of the peace since last April; am a carpenter and joiner; have known Phelps since eight or nine years ago, but not all the time. Am acquainted in

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the eastern part of Sylvan, and know many who know him. I would, up to this suit, call his reputation fair, and would believe him, &c.

Cross-examined — I lived eight or nine miles from Phelps. The first time I saw him he was trying a suit. A good deal has been said about him in my neighborhood since these trials. I think still, most would believe him there. I knew one man to say he would not believe Phelps under oath, and in two weeks after he said he recanted. This was Mr. Cadwell.

M. Welman — Live at Freedom; have lived there nineteen years; am a farmer and cooper; have seen Phelps; saw him first seven years ago. I have done business, and know his neighbors, in Sharon. Never knew his truth questioned till this trial; lived ten miles from him, and only saw his neighbors occasionally.

Cross-examined — Eyres, Lemn, Bell, Godfrey, and others, are among his neighbors I know.

C. Guest — Live at Dexter; have lived there eleven years. Am a harnessmaker, and acquainted in Sylvan, and also some in Sharon. Have known Phelps two years. Am acquainted in the neighborhood of Metcalf. Am pretty much acquainted over Sylvan, and have been there a good deal. Know his reputation; have known nothing against it: would believe him, &c.

Cross-examined — Have not had business with him. I made some inquiries about him when I was away with Clark. Do n't know that I ever knew one of his immediate neighbors speak of him.

J. Young — Live at Sylvan; have lived there seventeen years. Have known Phelps eight or nine years. Never knew any thing against his truth till this suit. Know all his neighbors, and would believe him as soon as any other man. I went to the prison three times while he was there, and inquired of Mr. Pease and others about him.

Cross-examined — I know Metcalf, the Franciscoes, Reynolds, and others, of his neighbors. Phelps was called a very fine man, and I believe he is such; just as good now as he ever was, for all I think. Have known numbers speak of him since the trials; it is a general talk. Have known a good many speak well of him since the trials; heard the weigh-master say Reynolds said he was as good a neighbor as he would want.

J. Jewitt — Live at Lima; have lived there fifteen years, and have known Phelps seven or eight years; knew him in Lima and Sylvan. I was acquainted with persons who knew him; he was generally known in Lima. I know his reputation; it is good, and I would believe him, &c.

Cross-examined — Do n't know that Phelps ever lived in Lima. About the time he was imprisoned, some questioned him. In my immediate neighborhood, the principal men, and most all the people, were acquainted with him. Never knew his truth questioned before the trials. I lived eight or nine miles from him. Do n't know his reputation in his own immediate neighborhood.

To Van Dyke — I speak of his reputation among those who know him in my place.

Mr. Doyle — Live at Sharon; have lived there since spring; for six years before lived in Lima, and for six years before that in Sharon; sold

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goods in Lima, and knew Phelps and his neighbors in Sharon. Never knew his truth questioned, and would believe him, &c.

Cross-examined — He lived in Sharon three years. Among his neighbors I know Bell, Irving, Chapman, and Powell. I saw them very frequently; never knew them question his truth.

D. Vandemark — Live at Lyle, Washtenaw county; was deputy sheriff eight years ago. Knew Phelps when he lived in Sharon, near Sylvan. I knew the people there then. Was justice of peace once at Ann Arbor. Was through Sharon, and know the people when he lived there. Had means of knowing his reputation; good; would believe, &c.

Cross-examined — Can't say I know the opinion of a majority of his neighbors. I saw him several times, and his name has been often mentioned.

A. J. Robinson — Have been in the employ of the railroad for the last few years; had a certain part of the road to keep in repair, including Reynold's crossing. A man named Blair left a cattle-guard there last spring. One of the two now there had been put down before I took charge, which was in February, 1851. Up to the time the last one was put down, there was no second guard there; am sure of this, as I had to pass over the road twice a day; and it was my business to watch and see things. The last one that was delivered there, had one side white-wood; the side was split but it was put down, and was there up to a month ago, since when I have not been there. My duty was to keep the track leveled up, to see to the keys, chairs, &c. No other cattle-guard has been delivered there since, to my knowledge. Could not be there twenty-four hours without my knowledge; there have been no broken pieces there. I read Fenn's testimony about a broken guard being there; had my attention called to it. Such a guard might have been delivered without my knowledge, but there was no necessity for it, and it could not at the time stated remain twelve hours there without my knowledge — and I know of none such. Stow put in the last guard; he and I spoke about the split piece, and I directed it to be put in, and it was put in by him under my direction.

Cross-examined — I took charge of that part of the road in 1850. Was in the service of the company before then in Marshall. I had charge from Grass Lake Depot to Davidson's station, about nine miles, and run over it twice a day in a hand-car. I have had occasion to repair the track at that crossing. I leveled up some of it there twenty or thirty feet west of the guard, also built a fence, and often fixed the keys. The last guard was left there in March or April, and put in in May, 1850. The side was split at both ends, but the splits did not meet.

Adjourned to the 29th, at 8 A. M.

MORNING SESSION — 65TH DAY.

FRIDAY, August 29.

C. Burr — Live at Lansing; have lived there about a year; previous to then, lived about a year at Michigan Centre, where I farmed on Mr. Fitch's farm. I lived west of the Centre eighty or one hundred rods. During the summer of 1850 I was often at Fitch's house; he was to

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furnish all things for the farm. I generally called at his house in the morning, as I was then most likely to find him at home. When I have gone in the morning before he was up, I have gone into his room. I now only recollect this happening twice. I can fix the date of only one of these occasions, that was on the 29th of August, 1850. He was in bed that morning in a room on the lower floor, west of the sitting-room. That morning, when I saw him in bed, the sun was about an hour and a half high. I fix the date as since before that time I keep a regular diary. I went that time about a team I tried to break, and which I wished to change. We had tried to break the second team in order to give rest to the twin oxen, which he wished to exhibit at the State Fair. My diary has an entry of trying to break steers, and it was the day before I so called that I tried to break them. The second occasion was a few days before the one mentioned. On this occasion also, he was in bed in the same room. On other occasions, about August and September, I have called and been told he was not up, and have waited and seen him coming out of the same room, partly dressed. At all times when I called there, his wife was already up. I frequently saw Westcott about there, but can't specify dates.

Cross-examined — Think the farm I worked on was two hundred and ten acres. My house was sixteen rods beyond the red barn; the barn may be one hundred rods from his house. I moved on to the farm in November, 1849. I did not refer to my diary to see the date, but I know it is entered there. The first date in that book is in the spring of 1848, and the last on last Tuesday or Wednesday. I put in ten acres of wheat. I broke up the land; finished 4th or 5th July; used three yoke in breaking up; finished the crossing with the twins. Holden subpœnaed me, he said he wanted to know if I could tell where Fitch slept at any time. I only looked at my diary with reference to that date. I generally eat breakfast about half past six, and get up about five. Generally milked four cows before breakfast. When I was at Fitch's, they seemed preparing breakfast. I went into the kitchen, saw Mrs. Fitch, asked for him, and she told me to go into his room. Did so, he was in bed. When I tried to break the steers I had the twins before them. First used the steers in breaking up; used them six days at it. I was frequently there; cannot tell the next morning I was there. Never was there in the evening when he retired. I stayed about ten minutes in his bedroom; he did not get up while I was there. He frequently had sick spells, do n't know if he was sick that day. I took the twins that day and commenced the cross-plowing; for two or three days before the 29th, I cut marsh hay; I cut hay that season for about eighteen days. Do n't know if Fitch had been up and out that morning. Mrs. Fitch was putting plates on the table; she took them from a kind of cupboard in the kitchen. I think Harriet Clark was not there; think she had gone home to her folks, who were sick. I do n't speak sure of this, I was so frequently there I can't be certain. May have seen Miss Clark and Amanda that morning, but do n't remember seeing either of them or the little boy. The entry on my diary for that day is commenced, cross-plowing with twins, and the day before, breaking steers. Think the next day it rained half the day — if so, it is entered on my book. Remember asking Mrs. Fitch if he was about, and she told me he

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was in his room. On the 28th I tried to cross-plow with the steers. I tried with them from about ten. I moved a little in the morning, but so little that I entered only breaking steers. Ansel Norton was with me trying to break the steers. In the room where Fitch was, there was a bed, a safe, a large trunk, and his guns. Do n't know if there was a curtain at the window; it was not darkened. I am not certain about the gun, but think there was one there. The room is longest from north to south. Never was in that room but the twice; think the first time was before the 29th. Have seen the doctor, at his house; but do n't remember if that morning any thing was said about sending for a doctor; the sick spells he used to complain of, were pains.

To Van Arman — Do n't remember that on either of the occasions when I saw him in bed, he complained of being sick. When I saw him coming out of that room, on other occasions, he appeared as usual.

To Frink — I saw Fitch again on the 29th; he came down when I was ploughing, think in the morning. The other times when I saw him coming out of that room, I was in the sitting-room.

A. Gillett — Live at Sharon; have lived there eighteen years, and have a considerable acquaintance through it and adjoining towns. Have been representative. Knew Phelps for several years before he went to prison. From my acquaintance with the people who knew him, I think I would know if his truth had ever been questioned; never knew it questioned till these trials, and from general reputation would believe him under oath.

Cross-examined — Lived six or seven miles from him; he lived there several years, I think. Bell and Powell lived near him, but were not his nearest neighbors. Godfrey also lived near him. Never knew his truth spoken of, and I testify from that fact. Never inquired about his reputation.

H. Smith — Live at Sharon; have known Phelps eight or nine years. Knew him before he went to prison. Never heard his truth spoken of, till these suits. Have lived nine years in Sharon, and have a general acquaintance with the people. Would believe him under oath.

Cross-examined — Lived four or five miles from him, when he lived in Sharon. I was about a year there, before Phelps moved there. He remained there till he went to prison. Hecock and Bell were among his neighbors. Never knew his truth spoken of, either for or against, till this suit. General Sprague never made inquiries of me, as to his reputation.

J. N. Cummings — Live in Sylvan; have lived there seventeen years. Know Phelps; knew him before he went to prison; have a pretty general acquaintance through there, and have means of knowing his reputation for truth; good; would believe him under oath. I know Mr. Chase, who was sworn here. I read his testimony; I do not know that I ever said to him, at a baptism, that Phelps was not to be believed; do n't remember saying so.

Cross-examined — Do n't say I did n't say so. I speak of his reputation being good before he went to prison, and after he came out. Bell, Raymond, and Irving, were among his neighbors. I never knew them to speak of his truth, till after this suit. It is pretty hard to tell what his reputation now is. I have not seen enough of his neighbors to judge.

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L. Allen — Live in Sharon; have resided there nineteen years. Knew him before he went to prison, for two or three years. Had a general acquaintance, and would have known if his truth had been questioned; never knew it questioned, till the trial; good; would believe him under oath.

Cross-examined — Lived six miles from him, perhaps; never had any occasion to make any inquiries of his neighbors, as to his truth and veracity.

A. S. Harris — Live at Chelsea; know Phelps; know his reputation in the neighborhood where he lived before the trial; good; would believe him under oath.

Cross-examined — Have lived two years at Chelsea; before then, lived at Davidson's station and at Lima Centre. Knew him all the time he first lived in Sharon; was some days with him at the land sale, in Ann Arbor; knew some of his neighbors; Metcalf, Riggs, Noah and G. Phelps, Bell, and others; but these are all the names I now remember. I conclude his reputation good, as I never knew it spoken against. When he lived in Sylvan, I was five or six miles from him. Never made inquiries about his reputation; am a constable, and employed by the railroad company to subpœna witnesses. The company did not furnish money to pay witnesses.

C. Millard, of Dexter — Known Phelps for about a year; he has been in the habit of doing business at Dexter. Am acquainted in the neighborhood where he has resided. Never heard anything against his truth. He is well known in Dexter; his reputation there is good; would believe, &c.

Cross-examined — Have lived ten years in Dexter, which is seven or eight miles from where Phelps lived, and five from Lima Centre, and ten from Chelsea. Heard he lived near Lima Centre, and these are his neighbors I spoke of. Have been to Chelsea, and beyond it; am engaged in lumbering. Phelps never did business there with me. Do n't know of my own knowledge, but have been told he does a good deal of business there. Wing, Whitewood, and Tyler, of Dexter, knew Phelps. Wing has been away some years from Dexter. Do n't know that he is acquainted with any considerable number of the people of Dexter. Since the prosecution have heard persons in Dexter say they would believe him. Have heard Nathan Pierce, a week or two since, speak of him, but not prior to the trials. Do n't know that I ever heard his truth spoken of till after the trial. Do n't know Metcalf, Riggs, Francisco, or Raymond. Do n't know who his immediate neighbors are. Have no recollection I ever heard his truth called in question in Dexter, before or since this trial.

Andrew Havens, of Dexter — Has lived there two months. Am in the employ of the railroad company, repairing track; have been so employed five years; worked under Robinson; began under him in March, 1850, and continued under him, repairing track between Grass Lake and one and a half miles west of Chelsea, till March, 1851. Reynold's crossing was in our beat. Know the two cattle-guards there, the west one was down in March, 1850, when I began with Robinson. Remember the second one being put in; it was there, but not put in when I went to work; the side-pieces are white-wood; one side-piece

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was split. There was but one lying there when I went, and no other guard, or part of a guard was left there since; the split piece was put in; it was put together at the time I began there. I went over the road twice every day when the snow permitted, in a hand-car.

Cross-examined — Commenced there in March, about the middle of the month, continued there till the last of last March. Stow put it in; think it was in June he put it in; I noticed it every time I passed till it was put in. Our object in passing along, was to see the track was in perfect order. Have stopped to fix the track at that crossing two or three times; can't state the date, but it was last summer; fixed once about the cattle-guard; the next guard west of Reynolds is a half or three quarters of a mile; at the guard at Wood's crossing, there was a piece left; that crossing is about two miles west of Reynolds. The piece was left as the guard was broken; we let Wood have the broken piece, and I saw him take it away. Saw it sometime last summer. Wood took but one piece, it was four or five feet long; do n't remember what became of the other part of the broken side; Mr. Reynolds may have taken it; he did, some pieces.

To Van Arman — Am certain Woods asked Reynolds for the broken pieces, and Reynolds told him he could have them; this was in the summer; do n't remember seeing a broken piece there after; it was about two feet thick and four or five feet long.

Robinson recalled — Know Wood's crossing; a guard was broken there. Wood took away the broken pieces; saw them after at his house; there were four pieces.

Cross-examined — Wood's is the first crossing west of Francisco's; can't state the time they were taken, but it was in the summer of '50; know there has been no part of the broken white-wood of that guard there this spring or summer; say there is not, for I have not seen any. Wood's is about one mile and a quarter from Reynolds' crossing.

Sylvester J. Cooper — Resides at Farmington, Oakland county; have lived there nearly three years; work at wagon-making for Mr. Stewart; know Elder Billings, formerly chaplain at the state prison; about the first days of last May had an interview with him; was out near the toll-gate, and he drove up; I went up to him and said —

Mr. Seward states he wishes to interrupt the witness; he do n't see how his testimony can be material.

Mr. Van Dyke will explain the object of the testimony. In their opening, the defence stated they would prove that Phelps made the match, and did show the finding of a certain block on his premises. We now seek to show that Billings, the gentleman who brought Hawley here to commit perjury, was an agent in getting up this defence; that he, Billings, wanted to get this witness to come here to assist in the defence, and did get the assent of witnesses employed to bring him here; that this witness was employed by one or more of the counsel for defence to aid in the defence; that they arranged if he could induce Phelps into any offence, they would have him, Phelps, caught in the act; that this witness did propose a scheme to Phelps to go to Oakland, to pass bogus money in a horse trade; that one of the defendant's counsel went out for the purpose of seeing to certain preliminaries, supposing Phelps would be caught in the snare, but that Phelps, suspecting the

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scheme, appeared to enter into it, and informed the prosecuting attorney of the matter, and thus escaped the snare. That Jack Adams was also employed to get witness to make matches, which were to be placed on Phelps' premises; that witness was asked, but declined to make them; that Adams did make them, and they were carried off for said purpose by Adams and Billings; that this plan was subsequently abandoned. Adams is now in Jackson, and if he denies his admissions to the matters in which he took part, we will prove them by an unimpeachable witness beside the one now on the stand. Besides, counsel on the other side, invited and challenged the prosecution to produce evidence of these transactions and their connection with them.

Mr. Seward — No testimony is admissible save what goes to sustain one or other count of the indictment. Testimony may be actual proof of acts or admissions of defendants, but that is the entire limit of the testimony applicable to the case. As I understand, it is now proposed to prove two things: first, that some of the counsel entered into a plan to decoy Phelps into the passing of counterfeit money. Am I now called on to argue that such proof is not pertinent to the issue? Does it prove the defendants burned the depot? Does it impeach any witness sworn by the defence? Does it even connect any of the defendants, living or dead, with the plot? Even if it did, what has it to do with the present issue? If the zeal of counsel exceeded their judgment, the defendants are not responsible for their acts. You can not convict the defendants of arson by showing them disposed to the commission of other offences. How is it shown that Billings was the agent of defendants? They are not responsible for anything he did, unless it is shown that he was employed to do that act. Even counsel are the agents of defendants only for the management of the cause in court, and can not bind their clients by the commission of any illegal act, or any act out of their legal duties. It is not even pretended that the alleged plot was ever carried into execution. Second,— it is charged by the prosecution, that the defendants caused the depot to be burned with a match; that the Niles' one is similar, and was delivered by defendants for a like felonious purpose. This proof has been met by proof of facts by the defence, to show matches in the possession of Phelps; to rebut such proof as has been given to show Phelps made the match, the prosecution must prove facts. How will the proposed testimony explain the fact of the block being found on Phelps' premises. It is conceded that the plot sought to be proven was abandoned; its only force is the inference, that when it was abandoned the same persons might have substituted the plan of placing the block there. Now, was this witness, or Billings, or Adams, appointed agents of defendants? What Billings and Adams said, is mere hearsay, and even if admissible, should be proven by themselves, and not by this witness, they not being parties to this cause.

Mr. Frink — Mr. Van Dyke said the testimony ought to be received, as I invited the testimony. The court will remember that the witness Phelps said on the stand that he heard I was at the head of a plan to assassinate him; to that, I invited and challenged all the testimony they could offer, but the evidence now offered is to an entirely different effect.

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and I oppose it, simply because it would lead to several issues; otherwise, I would be glad the testimony should be received.

Mr. Van Dyke — The court will remember that the expedition to Farmington was distinctly spoken of, and it was said by counsel for the defendants that they invited all the testimony we could offer as to it. We admit that we can not give the conversations; these we offered only on the supposition that full explanation was courted by the defence; but we submit that we can show facts, and all facts, that tend to throw light upon the fact that the block was found on Phelp's premises. Is it not material to show that matches were made to be put on Phelps' premises? is it not a legitimate argument that the same agency placed the block there? We submit that we can at least show that the matches were made with the avowed design of placing them on Phelps' premises.

The theory of the defence is, that Phelps made the matches. Do we not impeach it by showing that another party, interested for the defendants, made matches for the purposes stated?

Mr. Van Arman — The defendants rely upon the proof of the finding of the block to show Phelps made the matches; any proof tending to show that another put it there is material; it is immaterial who put it there, whether the defendants or any other person; that the person who put it there was a stranger to defendants, would make no difference in the materiality of the testimony. We now ask to show, not by the statement, but by the act of a third party, if you please, that he designed to do acts tending to show falsely that Phelps made the matches, and this alone was the end sought by the finding of the block. We can show by an unimpeachable witness that the matches were made for that purpose, and the plan afterwards varied to placing the block on Phelps' premises.

Mr. Frink has stated that he knows Billings is no agent of defendants. I do not at all mean to question his truth, but that Billings has been active for defendants is already shown to the court, and we have witnessed the results of his activity; but we have not shown all his acts; if admissible, we could trace him all over the country, and this witness would show that Billings had frequent counsellings with the attorneys for defence; and as agency can be proved like any other fact, we ask to show, by this witness, that both he and Billings acted in this matter as the agents of the defendants' counsel. If Billings was found preparing a similar block to the one found, with the avowed intention of placing it there, would it not be competent proof? and is it not equally competent to show him preparing slightly different means to accomplish the same end?

Mr. Seward — On the 15th of July, Mr. Frink stated he had no objection to going into an investigation of any rumors as to his aiding in a design to assassinate Phelps. The matter now sought to be proven is different. I did not then, and I say it respectfully, agree with my associate as to that offer; deeming it more proper, in the trial of causes, to avoid all personal matters.

It is now sought to prove that Billings got matches to place on Phelps' premises, but the thing was not done. The prosecution prove the delivery of the Niles' match, and admission that a similar one was used to

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burn in Detroit. The defence met that by proof that Phelps had the material in his possession for making such matches. This does not prove that Phelps made the matches, but it tends in that direction. The defence also prove a match was brought, by Lake and Phelps, to the Centre, on the 11th; that they had a box in their buggy, &c., when they said they had not; and that Lake had a box, and placed it in at Filley's, which are other circumstances tending to show the same result. Now, they might show that any person placed the block on his premises, and if that person was an entire stranger, the proof would be just as good as showing one of the defendants placed it there; but they do not offer this; they stop far short of it, and only offer to show that some person, at one time, entertained a design of doing some similar act. The proof shows the block for some time in the hovel, and this is not at all disproved by showing that Billings once designed to place matches there, but did not. If a paper is alleged to be forged, it is no proof, in support of the allegation, that some person, at one time, designed to forge a similar or other paper. There is no proposal even to show that any one of all the defendants even knew of the alleged design of Billings; and even if their counsel was cognizant of the alleged design of Billings, they had no authority to prejudice their clients by it; it was out of the scope of their duties; but I do not understand that it is said counsel had knowledge.

Mr. Van Arman — Will show one of the counsel had cognizance of the design.

Mr. Seward — Still he could not prejudice the defendants by his acts in that matter.

Court — If any counsel had a design to participate in any attempt to decoy or injure Phelps, and it was not acted upon, I think it is not relevant in this cause. The other proof offered, is, that Billings made matches to secrete on Phelps' premises, but that the plan was abandoned, and to infer that when it was abandoned, the plan of the block was substituted. To show that a person had a similar block to the one found, with the design to place it where found, would be competent; but it seems to me that the making of the match, as stated by Billings, is not a matter that has a proper legal bearing on the case. It is too remote to have a fair bearing on the case; but anything tending to show that he put the block there, or threatened to do so, would be competent.

August 29th, P. M.

Ira C. Backus — Resides at Jackson; know Phelps; first saw him at Michigan Centre; am a physician; was called to see Phelps at that time; had spasms or epileptic fits, bruised and lacerated himself when in these spasms; saw him have the same kind of fits when in Jackson; some of the fits he had when in jail, I thought were not genuine. I thought he was able to attend the trial; know A. F. Fitch; was his family physician for some time; whenever I attended him, Fitch's lodging place was in the bedroom down stairs; my visits were mostly in the summer and fall; had a conversation with Fitch last summer.

The witness was asked as to some statement made by Fitch; it was

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objected, that Fitch being dead, and not on trial, his admissions were not evidence, and the argument of the objection postponed.

Cross-examined — Saw Phelps once at the Centre; then attended him some days; don't know if he had spasms when he was brought up for sentence. Did not attend him when in prison; was called to see him during his trial, and thought him able to attend court; have kept a regular day book for several years; can not remember any particular time within two or three years, when I attended Fitch in the room down stairs.

To Van Arman — Have, I think, attended him in that time, and whenever I attended him it was in the room, but can not fix a date.

Samuel M. Millard, Dexter — Has lived there since '36. Know Phelps. Am engaged in mercantile and manufacturing business. Knew Phelps when he lived in Sylvan; am pretty generally acquainted in Sylvan; he was well known there, and I knew those who knew him; never heard his truth questioned; reputation good; would believe him, &c.

Cross-examined — Lived about ten miles from him, I think; have been to his house in Sylvan; was there last September. Conklin is a neighbor of his; knew Metcalf, Francisco, who was justice; knew Winans at Chelsea, Cummings, Spaulding, and the Rev. Mr. Moulton; had been there twice since Phelps came from prison. Never made any inquiry as to his reputation for truth and veracity; have had frequent coversations with the people who live there.

James Davidson, Sharon — Resided there since '35; used to know Phelps; first knew him in '43, when he lived in Sharon. My acquaintance in the town is general, never heard his reputation spoken of up to the time he left Sharon; would believe, &c.

Cross-examined — When he lived in Sharon I lived about three miles from him; he lived two years in Sharon. Newton, Powell, Godfrey, and Bell, were among his nearest neighbors; Chapman also lived near him. Never heard these or any one speak of or inquire as to his reputation.

Henry Easty, of Ann Arbor — Know Phelps; lived in Lodi when I first knew him; he then lived in Sharon some twelve or fourteen miles from me. I was pretty well acquainted in Sharon, and knew those to whom he was known; his reputation for truth and veracity was good; never heard any thing against it; would believe him under oath.

Cross-examined — I know twenty-five in Sharon; don't know if I know fifty. I believe Phelps lived in the north-west part of the town; among his neighbors I know Rowe, Lord, and Allen. Did not know Porter, Irwin, Chapman, or Godfrey. Knew Raymond — never heard any one speak of Phelps in Sharon; never made inquiry about him. I lived six miles from the town line.

Frederick Dixon, of Lima — Kept a public house there. Knew Phelps for about three years past; he lived in Sylvan, some nine miles from me. I am acquainted in Sylvan, and business has taken me there frequently. The most I saw of Phelps was at Sylvan Centre; his reputation was good so far as I know; would believe, &c.

Cross-examined — As far as I know, his personal friends give him his reputation. I have heard persons at Sylvan Centre speak of him; heard Godfrey say he was a pretty fine man; heard him spoken of at

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different times. Heard Mr. Charles Glover say his reputation was good for truth; this was eighteen months ago. I knew Metcalf, Reynolds, and Riggs.

Mr. H. Easton, of Lima — Lives two miles east of Lima Centre. Knew Phelps about fifteen months; am well acquainted in the east and south of Sylvan. I had a horse stand at Thomas Godfrey's, at Sylvan Centre. Phelps was well known where I was acquainted; I heard him spoken of a number of times, when he got back from prison; never heard his truth called in question.

Cross-examined — I live about eleven miles from Phelps, and am not much acquainted west of the Centre.

John R. Ball, of Lima — Has lived there sixteen or seventeen years. Know Phelps; have heard him spoken of; never heard his truth questioned; he is well known through that section; would believe, &c.

Cross-examined — Lived eight or nine miles from him; knew him first eight or nine years ago; have no acquaintance in his neighborhood; think he is known to the majority about Lima Centre, where I live; never made any inquiries, but at different times have heard him spoken of as going to prison. I do n't know any of his immediate neighbors.

Elijah Quigley — Lives in Napoleon, but now work at Francisco's. Knows Arnold, who lives near Michigan Centre. Last April I lived at home. I went home from 13th to 15th of March. I left the 21st day of April, to go to Francisco's. Arnold came to our place.

Mr. Seward asks the object of the testimony.

Mr. Van Arman — To contradict Arnold.

Mr. Seward thinks it is not competent.

Mr. Seward argues that the matter was collateral, and therefore the witness can not be contradicted, and cites Greenleaf.

Court — His going to Brooklyn is not material, but it is material to know what day he was at Filley's. He says he went to Quigley's two days after he was at Filley's. Ascertain what day he was at Quigley's, and then it is with the jury to say if he was mistaken.

Witness — He, Arnold, was at our house on the evening of the 18th April. I was at home from the 13th March to the 21st April. He was there but the once, to my recollection; he stayed all night. That was Friday, and the day of the arrests; he returned Saturday.

To Seward — He came after some wheat.

Mrs. Phelps, wife of Henry Phelps — Remembers going with her husband to Wm. Laycock's in December or January last, think December. Only went there the once; stayed all night; slept in the room with Laycock and family; had a child with me; the child was well; was not kept up or worried by it; it was as late as eleven when we retired; do n't remember that my husband and I kept awake and whispered. Laycock is a cousin of mine; think he and I talked after his wife and Phelps went to sleep; do n't remember my husband saying any thing about his coming a drive on Fitch if Westcott would stick by him; do n't recollect speaking to him of my child crying; did not go to bed at about nine P. M. Do n't recollect having any conversation with my husband after we went to bed; he did not in any form tell me any thing of coming a drive on Fitch if Westcott stuck by him, or mention Westcott's name at all. The day after this night, in the forenoon, my

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husband and W. B. Laycock started for the Centre, and returned as late as four, P. M. Remember being at John Palmer's with my husband three times; the last time was in February; we stopped there to warm ourselves; Minor Laycock came in there. We went to live on Metcalf's place in December, '49, and stayed there till between the 1st and 10th of last April; remember the wagon being broken, and Phelps sending Lake to Metcalf's to borrow augers to mend it; the springs were broken and he bored holes and tied it up. We went to Niles that day; Metcalf came there the same day and took the augers home; Phelps told him we were going away, and to take them home; do n't remember what time this was. Remained about a week at Niles, and he returned and came back to Niles after me.

The fastening to our door was a latch and thumb-piece, which often fell out, if the door was shut hard. Had a bureau while there, which stood in the bedroom that was partitioned off the east part of the house; the bed was in a recess, on the north side of the house, with curtains around it. The bureau stood in the bedroom, inside the partition. The door to the bedroom was at the south side, and swung into the kitchen against the south window; the bureau could n't be seen from the kitchen, nor from any part of the kitchen, or without going into the bedroom; there was always a white cotton curtain over the east window. Kept dishes on the top of the bureau, with a cloth over it; the dishes covered the entire top. Never knew of Phelps or any one shutting up the house to prevent persons coming in; never knew of any white-wood being around there. Latterly, my husband was away a good part of the time; the day we went to Niles, Lake took the horse and buggy back from the railroad; that was the same day the augers were borrowed and returned. My husband did not own any augers.

Cross-examined—Had n't been at Laycock's for two years before the time specified. Phelps said he was going to purchase Fitch's oxen, knew he was going to the Centre, before he left home; got to Laycock's, about eight, P. M.; to my knowledge, my husband never regarded Fitch as instrumental in his conviction. They always appeared good friends when together; never regarded him as instrumental in my husband's conviction.

Question — Did you not tell Carmer in this city, in the Temperance House, soon after the arrests, that Fitch, Mount, and Ackerson, were the means of getting your husband to state prison, and it is their turn now?

Answer — Never said that; he came in, and was speaking of the arrests; he said he lived up there, south of the Centre; he said he understood Phelps had been in the tavern, but he did n't know him. I told him he had been, and that he would know him by a colored blue shirt; then Carmer said, Phelps had always been engaged with Mount and Ackerson stealing horses for a living, that that was his business before he went to prison; said he was my husband, and he was coming. Phelps came in, and Carmer left; never saw Carmer before that I know. That was the substance of all that passed, as I remember; think Carmer mentioned Fitch's name, and spoke in his favor.

The time we were at Laycock's, we remained till after breakfast, and from there to Julius Laycock's. My husband went to the Centre. Each of the Laycock's houses are about four miles from the Centre — from the

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Centre, they returned to Julius's. We stayed at Julius's till dark, and then went to D. Laycock's. When we left home we shut up our house. Last winter was at Laycock's three times; my husband with me each time. It was more than one or two weeks after our return, that we went to Niles.

Lake went after the augers; think there were two, he went after them about eight A. M.; we left to take the cars, I think, about ten A. M. Think Phelps went up to Francisco's with Alfred Metcalf, while Lake went for the augers. It was the old man who took them home; he said he had been up to Francisco's to get money. Went to Niles, on a Tuesday. When I met Phelps at Niles, we went on to Michigan Centre. Left Lake at the house when we went to Niles — when the thumb-piece fell out, it fell outside; I only went to Niles once with Phelps prior to these arrests. Lake and Phelps went away together, often. Never knew of Westcott being there but once, before the arrests. Had only one child born last August.

To Van Arman — The window in the bedroom was one of nine lights, the three lower ones covered by a board; this is in the east end of the house; the house is banked up a little outside the window.

Mrs. Phelps, mother-in-law to Phelps — Has often been at his house in March and April, and along in spring. As often as once a week on an average; they had a bureau in the bedroom inside the partition. The door from the kitchen to the bedroom was in the south side, and the bureau stood ten feet from the door. Dishes, with a cloth over them, were kept on the bureau; the bureau was always in the same place. There was a window to the bedroom, and two to the south side of the kitchen, none to the north.

No cross-examination.

Mr. Van Arman states to the court that as there is always great difficulty in proving the description of localities, and as the peculiar location and lay of Beeman's field is important, he proposes that the jury should go out and view the field — he thinks this will be most satisfactory; otherwise he fears as it is so near to Leoni, the defence will bring twenty or thirty to swear away every fence and tree about the place; to save time and insure truth, he makes the proposition.

Mr. Seward states, he has in this cause been made painfully aware of the difficulty of adhering to the rule of not replying to what might be deemed personal matter; it needs only that the remarks made by the counsel should be repeated to call down the censure they deserve. He alluded to the questions heretofore before the court, and the remarks made as to signing stipulations, and said he would ask who has been sworn in this case; on which side has counsel been placed on the stand to state he had his ear in one and his head in another direction, who descended to the haunts of vice to learn matter to be subsequently testified to. It had appeared that some of the counsel for the prosecution were on that field already, accompanied by one of the jury, and under the circumstances he agrees to the proposal, but hopes this time permission will be given to counsel for defendants to accompany them, and let the jury there hear remarks, if from either, from both sides.

Mr. Van Arman will not reply to the tirade of the counsel, which he presumes is meant merely for the public; it may be owing to his being

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thick skinned, but the very pointed remarks of counsel has not at all wounded him; he did overhear a conversation of one of the defendants, and did visit a haunt of vice; he also testified to the truth that he knew, while the other counsel was here for months seeking to screen guilt, and if—

The court thinks the matter has gone far enough.

Mr. Stuart thinks Mr. Van Arman has not gone near so far as the rude and indecent attack made upon him by the counsel for defendants.

The court does not wish to prevent the counsel repelling any attack made, but desires to prevent excitement.

Mr. Van Arman says he will take a suitable occasion, which will, he trusts, arise in the case, to reply to the gentleman's remarks. In the meantime, he would say, that the propriety of the course pursued by himself, depends on the truth of his testimony, and the motives which prompted his conduct. If the facts alleged by the prosecution be true, if a dangerous conspiracy existed, and crimes of unusual character and enormity had been, and were about to be perpetrated, he would humbly submit that any measures consistent with truth and morality were proper. So the propriety of the conduct of the gentleman himself, depends on the motives which prompted him, and the objects which he sought to accomplish. If that gentleman has delayed the progress of the trial for justifiable ends, if necessary to secure the legitimate objects of a fair trial, he is fully justified. If he has delayed it two months, and inflicted a heavy tax on the county, either in hopes of breaking it up by the death or illness of a juror, or other accident, or to enable the defendants to concoct perjury, and thus defeat the ends of justice, his conduct cannot be distinguished, in point of morality, from helping them out of prison by handing them a file.

Mr. Stuart said that he felt it his duty to explain, that when the other jurors went out, Mr. Chaffe was detained by the sickness of a child, and afterwards went out for his own satisfaction. There was no attempt by counsel for prosecution, to use improper means or influence; and those who insinuate a charge of any attempt to use such influence, only show that they themselves would be capable of using it, if in their power. He considered the assault now made upon the juror as the most rude, indecent, and reckless one he had ever witnessed. It was a gross assault upon the honor of the juror, as well as the counsel for the prosecution.

Mr. Seward said, that his remarks were called out by the extraordinary expressions that the hills and trees will be removed by perjury. He will now say, he thinks it was improper that a juror should go out in the cars of the railroad company, without the knowledge of defendants, and accompanied by counsel for prosecution. He is glad now to hear the juror went at the solicitation of the prosecuting attorney. He is glad the responsibility is moved from the juror to where it properly belongs.

Court — The proposition that the jury should view the premises, comes now in the shape of a request from both parties, and therefore the court will accede to it.

Mr. Seward proposes the view should be postponed until the testimony is closed.

Court — It is not a case where the court would order a view, but it would, at the request of both parties, accede to it.

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Mr. Seward — Then we wish it understood, that we do not accede to it at present.

Mr. Howard — When the prosecution is through on all but that point, we will entertain the proposition, and go or not, as we please.

Mr. Bradley — Knew Phelps when he lived in Sharon; was well acquainted with those who knew him; never heard his truth questioned; would believe, &c.

Cross-examined — Have lived two years and a half in Ann Arbor. Do n't know where Phelps then lived, or his immediate neighbors, nor his reputation in his immediate neighborhood. Knew acquaintances of his in Sharon and elsewhere. I made inquiries about his truth two or three months ago, at the request of the freight agent; made inquiries as I met persons from there. Can't say I inquired of three persons from Sylvan; can't say I know his reputation in his immediate neighborhood; speak from the result of my inquiries.

To Stuart — Do n't know, of my own knowledge where Phelps lived; knew persons who knew him; never heard his truth questioned.

Mr. Seward moves to strike out the testimony of last witness; he speaks from the result of inquiries made at the suggestion of the opposite party; cites Greenleaf.

Court — It comes within the rule, and it is stricken out.

Court adjourned to 30th, at 8 A. M.

MORNING SESSION — 66TH DAY.

SATURDAY, August 30th, 1851.

Mr. Seward — During the time the court was adjourned, it is known that two of the defendants died, one of whom, Fitch, was regarded as the principal leader of the defendants. He has been considering the effect of this upon the case; the question is new, and he is not yet prepared to say that it has the effect of arresting the entire trial, but wishes now to save the question, that he may hereafter have the benefit of it, if, upon examination, he should be of opinion that such would be the effect of the said deaths.

Mr. Van Dyke — An affidavit has been filed showing their deaths, and an order suggesting the fact can now be entered, if not already done.

Mr. Van Dyke wishes to call the attention of the court to a question that remained undisposed of yesterday.

Mr. Seward — The matter referred to was this: The prosecution proposed to prove, by Dr. Backus, that Fitch said he at one time discovered a spy under his window, and was going to shoot him, but did not. It was objected to as incompetent. It would be objected to, if Fitch was even still living, but certainly is not admissible, he being dead. It is now as if Fitch never had been a defendant, and his admissions or statements can not be given against the other defendants. The fact of where he slept, if material, can be proved against the present defendants, like any other fact, but not by the unsworn statements of one who is not now a defendant. Even if on trial, Fitch's admission would be evidence only against himself; he not being now on trial, they can not be evidence against others.

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The question is relieved from any difficulty, by the circumstance that the fact to be established by Fitch's admission, is not a fact involving in, or leading to a decision of the issue, but is purely collateral and irrelevant, being material only to *test the veracity of a witness*, and for no other purpose. The collateral fact is an independent fact, not in furtherance of the crime alleged in the indictment. Fitch's admission, if he was living, might have bound him, but certainly no other defendant. Being now dead, his admission is pure hearsay. It is the same as if it was offered to prove that I admitted the same fact.

Mr. Van Arman — The conversation between Fitch and Doct. Backus, took place in November, but the occurrence spoken of, was said to have occurred previously, and some time about the end of August last.

Mr. Van Dyke — The proposition is to show, that in a conversation in November, and prior to the burning of the depot, Fitch stated that during the warm weather, he got up and went to his window, and saw a railroad spy about his window, &c., and in the same connection, spoke of Westcott being a railroad spy. If Fitch was living, this would certainly be competent against him, and would go to sustain Westcott. If this case was now to commence *de novo*, it would, even though Fitch was not a party to the record, be competent to give his statements after he was identified with the conspiracy, to prove the conspiracy.

Mr. Seward — Any proof of an act or admission of a conspiracy, would now be cumulative, and the testimony can only be offered to sustain the testimony already given by Westcott. If Fitch was now on trial, it should be received as against him, but it is mere hearsay as against the other defendants.

Mr. Van Dyke — Suppose the declaration of Fitch was, "I and the boys are going to burn the depot," could it not be proved if he was not a party to the trial, after he had been identified with the conspiracy? and if competent to prove it, it might be contradicted, and if contradicted, sustained.

Seward — Yesterday the court refused proof of an intention to place matches on Phelps' premises in order to explain how the block came there. The present question is the same in principle. The prosecution proved a conversation of Fitch's; we proved an alibi. Now they must disprove the alibi. Cites Russel, 696.

Mr. Fraser argues, that when a combination or conspiracy to commit sundry acts within an extended period, each conspirator is bound by the acts of his fellows, and their acts and admissions, whether they are parties to the record or not, if made in furtherance of the common design, are evidence against each and all, if the admission is made during the existence of the conspiracy.

Mr. Seward — The last argument seems based upon the supposition that the jury are trying an indictment for a conspiracy to commit several felonies. Such is not the case. The indictment refers simply to the burning of the Detroit depot. If ever a record of this case goes to the Supreme Court, it will simply appear that to sustain Westcott, they offerred to prove Fitch's admissions at a time when Fitch was not a defendant. Westcott's testimony being only against Fitch, and Fitch being now dead, to sustain Westcott is to sustain an immaterial portion of the testimony.

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Mr. Fraser — The object of the present testimony is not to prove anything against Fitch, but to sustain Westcott, whom they have sought to impeach.

The court, after fully reviewing the arguments of counsel, held that the testimony was not admissible.

Miss Ellen Quigley, of Napoleon, Jackson county — Know Nank Arnold; he came to our house on Friday, I think, the 18th of April, and left there on the next day, Saturday. Heard of these arrests on the Saturday he left our house. This was the same day the defendants were brought to Detroit. Arnold never slept at our house but the once this last spring or summer.

Cross-examined — He arrived on Friday, about twelve, and left next day about nine, A. .M Am sure it was Friday he came.

To Van Arman — Heard of the arrests, and that fixed the time in my mind.

Miss E. Coy — Know Amanda Fitch; live at Jackson; have lived at Michigan Centre. Saw her the second day of last June, at Michael Coy's, and had a conversation with her about this trial, and she said she was coming as a witness for her father. I asked her if she was not afraid of being a witness, and going into court where there were so many men; she said she was not; that she had her testimony written down, and her mother helped her to write it down. She did n't say her father had written, and requested her to keep an account of where he had been before the arrests. She said she had it set down where he had been for fifteen days before the arrests.

No cross-examination.

Mr. Van Arman wishes to know if the defendants will accede to the proposal, that the jury should go to view Beeman's field, when the prosecution close their testimony. He supposes it would also be proper for the jury to view, in charge of a proper officer, the premises about the depot and Johnson's hotel.

Mr. Seward prefers to give an answer after the prosecution have closed their testimony as to all save the field in question.

D. Clark recalled.

Mr. Van Arman states he wishes to prove by this witness, that the hole under Filley's bar has not been enlarged since last fall; also that Phelps and Westcott gave him statements, from time to time, as they occurred, of the matters testified to by them.

Mr. Stuart —We wish also for the purpose of sustaining the witnesses sought to be impeached, that from day to day they communicated the facts as they learned them, to Mr. Bates, Clark, *et alteris*, and also paid over the money received from defendants as stated by them.

Mr. Seward has no objection as to the matter of the hole, and will meet the other point at the proper time.

Mr. Clark — Last October, in consequence of a communication from Westcott, I examined the hole under Filley's barroom; have often seen it since, and have examined it lately; I can perceive no change in its size since October; it appears to me no larger now than then.

Did Westcott and Phelps and the others, from time to time, give you written statements of what they discovered, and have testified to, as they discovered them, and did you keep these statements ever

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since in your possession, without showing said statements of one to the other?

Mr. Seward objects to the testimony; it is sustaining a part of his own statements.

Mr. Van Arman — The object is to rebut any presumption that the witnesses conspired to testify in concert, and show that neither knew what the others were going to testify to.

Mr. Van Dyke — When there is an impeachment of a witness, you may sustain him by showing consistent statements. Cites Cowen and Hill's notes, pp. 776–7, 8.

A conspiracy is also alleged against Phelps; this testimony will rebut that, for the alleged conspiracy is inconsistent with it; we do n't at present offer the statement.

Mr. Van Arman — We propose to show, that about the time of the State Fair, when Fitch spoke of burning the depot, he at once communicated the fact to witness.

Mr. Seward — They do not propose to produce the statements — they are not here — and being in writing, can not be proven by parol; this is, in itself, sufficient answer to the offer; they cannot prove that communications were made, without showing what they were. Mr. Seward commented at length on the authority cited by Mr. Van Dyke, and urged that, in the present case, there was no attempt to contradict Phelps, as to his having furnished such statements from time to time. And contends that the authority in question does not apply to the facts now before the court.

Mr. Van Arman — It will be remembered that when Westcott testified as to his conversation with Fitch, he was asked if he communicated it to any one, and the other side said it was time enough to sustain him when he was attacked; he has been attacked, and now we ask to give the sustainment, to show he did communicate, and that thereby some of the designs of defendants were frustrated.

Mr. Seward said, there was no attempt made to prove that the witnesses had seen each other's statements, therefore there is no use in showing they did not; besides, the witness can not possibly prove that they did not themselves show them, or communicate them to each other. The whole scope of the proposed testimony is, to show that, on other occasions, the witnesses made statements consistent with their testimony. Wherever such testimony has been received, it is in consequence of some change in the position of the witness, which would appear to lead to a difference of statement; as in the case of an accomplice, his statements, while an accomplice, would probably differ from those made after he became state's evidence; and that, at both times, when in the different positions, his statements were consistent, would be strong presumption of their truth.

These witnesses were not accomplices; they have not changed their positions from beginning to end; they were paid informers, seeking evidence against the defendants. The counsel says they have destroyed the entire defence. He (Mr. Seward) is sorry that the counsel does not yet understand the nature of the defence; the counsel says the defence is, that the prosecution's witnesses committed the crime; such is not the defence; the defence is, that no such crime was committed by any one,

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but that the prosecution's witnesses have fabricated the proof of a crime that no one ever committed. The defence all through have been impressed by the fact, that the witnesses for the people made written statements, and they fixed what they meant to swear to in their minds, and now they seek to fortify them by proof, that they did do what has borne so hard on defendants, to substantiate their sworn by their unsworn statements.

The Court, after reviewing the arguments of counsel, held, when there was no attempt to show that a witness made inconsistent statements, unless under ome peculiar circumstances — as in the case of an accomplice, &c.— it is not proper to receive his consistent statements; but as to the other branch of the question, that as it has appeared that statements were made to Clark, he may be asked as to whether these statements were shown to the other witnesses.

Mr. Seward notes an exception to the last portion of the decision.

Mr. Clark — I did not procure or allow the communications I received from one witness, to be communicated to any other witness, save as to Phelps and Lake, whose statements were connected; but their statements were not communicated to any of the others, or those of any of the others to them.

Was your first introduction to Phelps through Mr. Bates, District Attorney?

Mr. Seward objects to the testimony.

Mr. Stuart — It is alleged by defendants that Phelps was stimulated by the hope of reward; now we wish to show that his employment by the railroad company was accidental, and grew from his having communicated to Mr. Bates what he learned about the present matter while in the employ of Bates for another purpose. It will rebut the pretence of a combination among the witnesses for the prosecution.

The court thinks the testimony cumulative, and not now admissible.

Mr. Clark — I saw Lake at Grass Lake on the evening of the 10th of April last; also saw him at Grass Lake on the 11th; on both days he appeared quite unwell, and looked pale and feeble; had the appearance of suffering under chill fever. He was walking about, but appeared quite unwell; he might have walked half a mile, but I think it would have been difficult in his then state of health; he had been unwell for a week before, and part of the time confined to bed. My testimony as to his health, refers to the 10th and 11th, more particularly to the 11th.

I know that Phelps was in the city of Detroit on the Thursday after the 11th of April last; I saw him in Detroit on that morning. I went out in the cars, and saw him in Detroit before I left.

On the night of the 11th, I saw Lake at eleven or twelve, at Grass Lake; he had an overcoat with him.

Cross-examined — It may have been later than October I examined the hole at Fllley's. I never again examined it till after the arrests. The last time I saw it there were two large stones by it; if they were in it, it would be smaller.

I remember seeing Lake on the 10th, but am indistinct as to the particular point where I saw him. It was between ten and twelve, P. M., when I saw him on the 11th at Pease's, at Grass Lake. Do n't know

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where he stayed that night. Saw him next day at the depot, and he took the cars and went to Niles with me some eighty or ninety miles.

The pond at the Centre, is about a quarter of a mile from Filley's. I returned from Niles to Marshall, on Sunday, and came to Detroit the next day, Monday; then remained in Detroit till Thursday, and on that day, went home in the morning train of that day. I saw Phelps also on Wednesday evening. The arrests were made on Saturday, the 19th, early in the morning. I now remember that, on Thursday, I went out by a special train in the afternoon, not in the morning train. I have nothing particular to refresh my memory, but think it was not on my way out that I met Phelps, on Thursday. Have nothing to refresh or remember by, but my memoranda; it shows I saw him Thursday, but do n't show where. I recollect Phelps being here the night Dows went off, and that was Tuesday.

I still have the witnesses' statements in my possession.

August 30, P. M.

Heman Lake, recalled — What was the state of your health, on the 11th of last April?

Mr. Seward objects to the testimony, as cumulative; after argument, the question is allowed.

Witness — I was very poorly in health that day, and for some time previous; had been very ill during the preceding winter; might have walked a little, but could not have walked a great way on said 11th.

Went to the Centre that day with Phelps.

Did you get out of the buggy at all between Cady's and Michigan Centre?

Seward objects that it is cumulative; that he testified before, in effect, that he did not.

After examining the testimony, the court allows the question, and Mr. Seward takes an exception.

Did not, on that day, get out of the buggy and go across any field, with anything in my hand; if I got out of it at all, it was for some temporary purpose; did n't go through Leoni village going to Centre.

From Cady's, we went a short distance south, then a little west, then north, till we struck the main traveled road, then west to the four corners, south of Leoni, and kept right on west to the Centre. Am not familiar with the distances there, but think the four corners about half a mile south of Leoni. Phelps and I kept right on together to the Centre. I had once come from the Centre on that road, to said corners, about one to three weeks previously; Phelps was then with me; we had the same wagon and gray horse on both occasions; on this occasion we went to Leoni; we went to Leoni; we got very near to Leoni village, and I got out and went into a garden like, where I saw some one I took to be Corwin; defendant and Phelps went on to Leoni alone. I afterward went on, and joined him in Leoni at the tavern. On the 11th, when at Cady's, I had an overcoat with me in the buggy. Can't tell where in the buggy it was; when at Cady's, it had been between us on

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the seat, but being warm, it was thrown down somewhere in the bottom of the buggy, before we got to Cady's.

(Witness here produced the coat — a drab one, with red plaid lining.)

There was nothing in the buggy but Phelps, myself, the coat, and some hay or straw; we had no other bundle, or anything else in the wagon.

Phelps once sent me, and I borrowed some augers from Metcalf to mend his buggy. I told Metcalf I did not know what size he wanted, and he told me to take two or three, and I did take two or three; brought them to Phelps; he used them to mend the buggy; they were used for no other purpose. Am strongly of the impression that Metcalf took them home the same day. I know Phelps and his wife went to Niles that day. I went to Francisco, and took their horse and buggy which they went down in, and went to Whittmore Lake, and stayed there till the day when Phelps told me he would return, and then returned to Phelps'.

Do n't know Cowdon; am certain I never wrote at a bureau in Phelps', for there was no bureau in the main room; there was one in the bedroom, but that room was too dark to write in.

Neither I, or Phelps and I, ever did manufacture, or have manufactured, there or elsewhere, any such matches as these shown me. Never knew of his having any thing to do in getting such manufactured.

Never knew of such a block as was here shown being placed in the hovel; never saw such round there; used to work in hovel at chores, &c. While I was there, the hovel was pretty full of hay. After Phelps left the premises, I took a load of hay from there to Reynolds'. It was before the eleventh I so drew the hay. Do n't know a man by the name of Stow, that I remember of; I remember going to the house with Phelps, Westcott, Metcalf, and, I think, his son, on the tenth, and we took some fish from there. I do n't recollect of Phelps going to the house on the evening of the tenth.

When Phelps left me at Filley's on the 11th, I went to bed. Do n't know when I got up, but should think about four P. M. I saw two young men from Jackson; they came in soon after I got up. I had no bundle, box, or anything else put in the little room that day. Do n't know Arnold. Had no conversation with Filley about putting any thing in the little room — had nothing to put there. Did n't lock or unlock its door. Did not see Filley unlock the door, and go towards him. It was after dark Filley left to go fishing; he had one man with him, a little boy, and we were to meet another somewhere else. I went with them, at Filley's request; staid a little time, and felt feeble, and went back to the tavern. I got no key, asked for none.

Cross-examined — Had chills and fever at that time; on the morning of the 10th, we went from Detroit to Metcalf's; got on the cars at Francisco's; it is about a mile from Metcalf's; went from Reynolds' crossing to the territorial road, on the 11th, and from there west; think we stopped no where before we got to Cady's; we did not stop at a blacksmith shop; think we went south that day from Cady's, and then went west; it was a traveled road; think it was fenced a part of the way, perhaps all; went north till we struck the territorial road; did n't see Burnett's house, that I know; struck the territorial road I think over a

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mile from the Centre; do n't remember if there were dwelling houses along the road; do n't recollect crossing a plank bridge, but may have done so; were not in sight of Leoni when we turned west; we were south and west of it.

Do n't know where Beeman's Corners are; think we passed a water hole or marsh somewhere; do n't recollect meeting any one along the road. Do n't remember meeting any one after we turned west to the Centre; got to the Centre about twelve; we came into the Centre up to the west end of Filley's house; crossed the railroad right at his house; think there is a saw-mill along the road somewhere; do n't recollect much about the mill; the road crooks somewhere, but do n't turn any corners after the corner near Leoni. Filley opened the little room while I was there, but do n't remember if it was before I lay down; it was the time he brought in the box and locked it up; think we left the Centre about 9, P. M.; was quite feeble that night; went on foot, next day, to Burnett's, about a mile and back; think, at Filley's, I took my overcoat in and hung it up; know I hung up one coat there in the barroom, but not certain if it was my over, or other coat. I saw no signs of dinner; went into the kitchen; saw another lady besides Mrs. Filley there. Did not carry my overcoat while walking that day; never took it out of the wagon till I got to Filley's. When Filley went to fish, I think he went above the mill; it was dark when he started. The time Phelps and I went from the Centre to Leoni, was a few weeks before the 11th; we came down from the west to the Corners, and then went into Leoni from the south; the yard, or garden, I got into that day, was on the road, south side, between Coykendall's and the railroad. Did n't notice what kind of a house was near it; can't say if I got out before we crossed the railroad; the yard was west of the north and south road; can't tell the kind of fence round the yard; think the yard lay in the corner, but can't be certain, as I did not notice particularly. Got over a broken part of the fence; do n't know if it was board or rail fence; before I got to the man, I saw it was not Corwin, and turned back. When I got back the horse's head was towards the west. That day had been to the Centre to see Fitch and the others. Got to Leoni, I think, about twelve; the night before, I stopped at Phelps', and that morning went to the Centre; saw no one there that I knew; got there about eleven; made no stop there.

Do n't remember particularly if I had my overcoat that day; presume I had, as I generally carried it; this was after I had borrowed the augers; went to the Centre that day through Leoni and Grass Lake, and did n't, as I recollect, make any stop on the road. From Phelps' to the Centre is about ten miles; going to the Centre, came into Leoni from the east; returned to Leoni by a different road that day. Crossed the railroad once or twice, and came into the Centre, by turning south to the railroad, and going along by it. Did n't stop long at the Centre; went into the barroom, saw no one there, got into our buggy, and went to Leoni by the other road; do n't know where we took our dinner that day. Could n't now tell where I dined each day last week. Think where I got out of the wagon is about eight or twelve rods from Coykendall's. Do n't recollect, but think Phelps was in the barroom when I came out of the lot; as I came to the tavern, Phelps came out and said

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there was no one there, and we got into the buggy; presume I met persons I knew that day, but do n't now remember who; from Leoni, home, took the same road we took going in the morning; stopped a while in Grass Lake, on the way home. On the 11th, I went to the pond; left Filley's with his boy and Filley, and a little way down another man joined us, and we four went to the pond together. Did n't stop ten minutes at the pond; while there, Filley lighted a little fire, and put some in the boat.

Since the trial commenced, I have been through Leoni and the Centre, but did not stop. Went to the pond as Filley asked me to go. Think I passed the saw-mill on two occasions. On the 11th, we had an iron-gray horse; all the winter, and that day, I wore a black broadcloth cap. Am not certain, but think it was after I got up, that Filley brought in the box. After I got there, I sat awhile in the dining-room, and then went to bed. Mrs. Filley and the other lady were in the dining-room.

What had you while you were in the dining room?

Objected to as not legitimate cross-examination.

Van Dyke — The witness was called and examined merely to rebut the statement of Arnold; he was, on the direct, confined closely to that.

After further argument, by Stuart, Howard, Seward, and Fraser, Mr. Fraser insisted that it was plain that the object of counsel was to open the door for contradictory testimony; but this can not be allowed, as they were bound, in the first instance, when they entered at all on proof of Lake having brought a bundle to the Centre, and having had it there, to give their entire testimony upon that point.

Mr. Seward — Thought the object was to screen the witness from cross-examination. He wishes to show, by him, that he had a bundle in the kitchen, and that that bundle was not the overcoat.

The court referred to the testimony of Lake, at the different times he was on the stand; the object for which he was now called, the length to which the examination proceeded, the arguments of counsel, and that as the prosecution confined themselves to the matter of Arnold's testimony, and stopped there, the cross-examination can not go beyond that particularly where so many opportunities were afforded of going into the matter before.

Mr. Seward noted an exception.

Witness — Did not see either of the ladies in the barroom that day; had no bundle in the barroom; did not sit at the fire in the barroom with one in my cap.

To Stuart — You stated that you, in going from Cady's, struck the territorial road; do you know what road is the territorial road?

I do not. The road I mean was a well traveled road, but I do n't know if it was the territorial road. Know it is not the road that goes through Grass Lake.

U. T. Howe — Is acting treasurer of the railroad company.

Mr. Stuart states, he intends to show by this witness, that the money received from the defendants was paid over by Phelps and Lake to witness, as stated by them.

Objected to, and objection sustained.

Witness — I remember Thursday, the 17th of last April. I am not

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positive, but my impression is, on that day Phelps went out in the morning train, and returned in the evening; that was the day Williams came in.

Cross-examined — I think we heard Williams was leaving, and that Spaulding and Phelps went out to find out about it. I am sure Phelps came in in the evening with Williams. I have a strong impression that Phelps went out in the morning, but am not positive.

Court adjourned to 1st September, at 8 A. M.

MORNING SESSION — 67th DAY.

MONDAY, SEPTEMBER 1st.

H. L. Spaulding recalled — On the Thursday morning, after the 11th April last, Phelps was in this city; that was the Thursday previous to the arrests. Saw him that morning at the depot, and he went out in the morning train. I followed in a special train, and saw him the same day, at the Centre, where he got off. He was in Detroit on the Wednesday the previous evening. On the Tuesday evening preceding, he came in from Grass Lake with me on the cars. I saw him in Detroit at different times during the Wednesday.

I went to Beeman's field, and there pointed out the spots where the boy and the old man swore they stood, and where the rail cuts were. Also went to the house, and pointed out the elevation on the road between there and Leoni, which was pointed out by the boy. The persons to whom I so pointed out these places were gentlemen from Marshall and Albion; this was yesterday.

Cross-examined — On the Tuesday after April 11th, I got here in the evening. Got on the cars at Jackson. Was with Phelps some time after we got in. Saw him the next morning, and two or three times during the day. On Thursday morning saw him at the depot, and told him to get in the regular train. Monroe, Johnson, Dickey, and Holland, of Marshall, were among those I showed the field to.

James Monroe, of Albion — Am sheriff of that county. Examined yesterday, a field shown by Spaulding near Leoni, on the east side of the north and south road; from the road to the rail cuts is, I think, from forty to sixty rods; the grubs had grown up so I could not see the road without getting on a stump. Mr. Beeman pointed out a spot on the summit, the highest part, nearer the rail cuts than the road, say forty rods from the road; from there could see plainly back to the rail cuts. The grubs were from one to three feet, of this year's growth; one was taken up that is higher than a fair specimen of the grubs.

The old gentleman pointed out a second spot, nearer the house than the spot on the summit; nothing to intercept the view from there to the summit; could see from there plainly a boy anywhere within ten rods on a direct line to the summit. Both sides of the hill, which is slight, are visible from that spot; standing on the ground at the rail cuts, the hill intercepts the view of the road. Noticed the road as it comes out of the woods. In the woods the road is lower than the field.

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A place about fifteen rods from the woods was pointed out, where it was said the buggy stood; it could not be seen till it got there from any place between the cuts and where the old man stood. Spaulding took a bundle of papers in a silk kerchief at the spot where the buggy stood, put it under his arm and went over the west fence.

From east of Beeman's house took an observation of the Leoni road; there was one point where you could see a team pass — saw one pass. Could tell a man from a woman in the team. Think I could tell horses from oxen. Could not tell if it was a load of rails. Think I could not tell if it was a one or two horse team. That is the only spot of the road where any view at all is had. Think the interception is caused mainly by trees; the team is seen for the space of three rods, and at a distance of about a quarter of a mile; the road angles there.

Cross-examined — Went at the request of Mr. Clark; there had been wheat grown in the field; standing on the elevation in the field that the old man pointed out, a team could be seen coming down from the west, but where the old gentleman stood a team could be seen only at one point; the view is obstructed by a grove of poplars; even in spring, I think a team could be seen only at the one point. .

I also stood near the house; there is a grove of grubs between there and Leoni, ten or fifteen feet high, with leaves, and some ten or fifteen rods north of the house; also, there are trees on the west side of the road, between the grubs and the elevation; the grubs tend to obstruct the view of the road. There is a hollow, ten or fifteen feet in length, about half way between the house and the elevation; that road is fenced on both sides, and there are grubs along the fence on the east side.

The spot where the buggy was said to stand, and where Spaulding got into the field with a bundle, is about sixteen rods north of the woods and south of the field.

Col. Dicky — Examined the fence yesterday; went back where there were some pieces; the spot was pointed out by Spaulding; old Beeman was along; he pointed out a spot on the summit. Persons standing on these points could see each other, and at all spots between them. Spaulding pointed out a spot about thirty rods north of the summit; nothing to intercept a view between there and the summit. From the first spot to the last there is no spot where a boy would not be seen on the summit; there are grades in the field, but they would not impede the views I have mentioned.

A spot on the road was pointed out, as where a buggy stood. Spaulding there took a bundle in a hankkerchief, and went into the field; after he took a large bundle of paper in a red handkerchief, and went a second time over the fence.

From the rail cuts to where the old gentleman stood, coming in a regular direction, I can not say where he would first see a buggy in the road.

Standing where the old gentleman stood, think you would n't see a train coming down the west road; there are poplar trees and grubs, and the road is low.

Stood one or two rods east of Beman's house; from there I could see a very small portion of the Leoni road, at two points; the first fifty rods from the house; the second near Leoni; the latter elevation was

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the one pointed out; could not describe a team from there, passing; could tell men from rails; think I could tell horses from oxen.

Cross-examined — The grubs and poplars intercept the view of the west road; there are grubs and poplars along the road, north of the house; quite thick in some places, and with leaves on. The elevation where I saw the wagon, is about one hundred rods north of the house.

I was with Spaulding, when he got over the fence; he was about ten rods north of the woods. There are small grubs along the west fence there.

Joseph Hollon, Marshall — Examined Beeman's field yesterday, with Spaulding; there was a spot on the summit pointed out to me, and a spot east of that, and also a spot north-west of it. Do not know where Williams then worked; never saw him work. At Leoni, saw Charles Coykendall; he was sitting in the bar when I went in; I asked him where Williams was. Williams was there, living at Coykendall's. My horse only ran a little; I hitched him to the post, with his head west. It was about one, P. M., when we got back to Leoni.

From one point to the other, persons could be seen plainly, all the way; going from the rail cuts, to where the old man stood, you would have a plain view of the spot on the summit, all the way; coming from the rail cuts, to where the old man stood, the elevation would prevent a person seeing a buggy, coming from the woods, until you arrive at the spot where the old man stood, nor from where he stood, could n't be seen, till it got out of the woods.

[A plan of the field is shown, which the witness identifies as correct.]

Saw Spaulding take a package of papers in a red and white handkerchief, and get into the field, at the place where the buggy was said to stand. Could see it plainly from where the boy stood; he then took a red handkerchief, but that showed less plainly; in neither instance could I judge of the size, or shape of the bundle.

I did not notice particularly the west road view. Went to the east of Beeman's house to view the Leoni road; there are high grubs, save in the one spot, where there is a vista; from the house, the road descends, then rises, descends again, and then ascends; could see a wagon and team; could n't tell how many persons were in it. Think I could tell if it was drawn by horses or oxen; might, by a close observation, tell if it was a one or two horse team. The persons in it, looked like one solid mass.

Cross-examined — Where Spaulding got over the fence is, I think, seven or eight rods north of the woods; the paper was flat, the usual foolscap size, I think. After he got over the fence, he went towards the west road; was then on the summit, I think thirty rods from him. From the spot where the old gentleman was said to stand, is about forty or fifty rods from where the north and south road came out of the woods; did n't notice any angle in the track on that road.

When east of the house, I did n't see the wagon going to Leoni, till it got to the elevation, after it passed the house; grubs along the road prevented my seeing it; the wagon went up to the house with us, and passed on; the elevation is near the burial ground; it was about 5, P. M., when I was there.

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Randall Watross, of Marshall — Examined the field yesterday. The spots where the boy stood, and the rail cuts were pointed out; they are fifteen or twenty rods apart; a spot was also pointed out, twenty rods north, where the old man stood.

Nothing to intercept the view from the rail cuts to the summit. The boy could be seen on the summit from the rail cuts. Nothing to intercept the view between where the old man and the boy were said to stand; they could see each other; the summit slopes down to the road. From the rail cuts to where the old man stood, there is no spot where a wagon, coming from the woods, could be well seen till you got to that spot.

A spot was pointed out where the buggy was said to stand, a little south of west from where the boy stood. A man then took a bundle in a red kerchief, and got into the field west. I stood where the old man stood. I could n't tell the kerchief was red. I could not distinguish the first kerchief he took, and could not tell the size or shape of the bundle. Spaulding was in the field when I saw the bundle. I took a view of the west road from where the old man stood. Could get a view only at one point; the unevenness of the ground and trees intercept the view.

Went east of the house to view the road to Leoni. Could only see it at one spot; a wagon passed; if I had not known, could not tell horses from oxen, or if it was loading or people in the wagon; nor the color of the team, unless white.

When I saw the bundle I could not tell its shape, or size, or length; it was not larger than a volume of Greenleaf. Could not tell its length, or breadth, or thickness. If it had been in anything black, and the person had black clothes, think I could not have seen it at all.

Cross-examined — He once had it under his arm, and once in his hand. Was then forty or fifty rods from the woods. Did n't go up to them. Think the road runs straight there. The road is more open on the west than the east side.

The wagon I saw on the Leoni road, from the house, was black, with open double buggy; it came down the west road. Did not see it till it got to the north and south road. As it passed over the elevation on the Leoni road, I think I could tell if it was a double team, and that there were people in it.

From the house, the view is interrupted by trees; nothing to intercept the view to the first rise north of the house.

Went at the request of Clark and Van Arman.

Henry C. Woodruff — Examined the field; where the boy stood was pointed out, also the rail cuts and where the old man stood, and where the wagon stopped in the road.

From where the boy stood to the cuts is twenty to twenty-five rods, and almost thirty rods to where the old man stood, and about twenty to where the wagon stood. Nothing to obstruct the view between the summit and the rail cuts. The grubs have grown up some; the growth this year averages two and a half feet; the old growth is about eighteen inches; nothing to obstruct the view between where the old man and the boy stood. Could plainly see each other. I stood where the old man, and also where the boy stood, and took a view of the west road.

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From where the old man stood I could see a wagon on the west road only at one point; that was, coming down a little hill about thirty rods from the corners; watched, but could not see it again till I got to the corners The view is obstructed by trees and bushes, and unevenness of the ground. The trees are pretty thick in some places.

I stood where the old man stood when Spaulding went into the field with a bundle. I could see the color if red or white, but could not if it was a dark color. I saw it tried only with a red handkerchief. I do n't know what the bundle was; can't say if it was square; can't say if it were square or round; think from its appearance, it was about a foot.

Cross-examined— It was about three to four o'clock P. M., I was there. When Spaulding got into the field with the bundle I was about thirty to thirty-five rods from him. He was over the fence when I saw him; saw the bundle as it extended in front of his body. His side was to me.

The unevenness on the west road is thirty or thirty-five rods west of the corners. I can not state certain, but think when I first saw the wagon it was forty rods west of the corner. I then stood where the old man was said to stand; the trees extend down to the corners.

N. B.— Spaulding and the other witnesses who saw the bundle, stated it to be a package of large foolscap, very thick.—REPORTER.

Henry Phelps recalled — Last spring sent Lake to Metcalf's for augers to mend a buggy; used one of them for that purpose; was telling A. Metcalf I wanted to take my wife to the cars, but my buggy was broken; he said I could mend it by putting a block under it, and could get augers at his fathers. Old Metcalf took them home the same day, used them for no other purpose than to mend a wagon; neither I or Lake, or any persons for me, or to my knowledge, manufactured.

Mr. Seward interrupts the testimony as cumulative.

Witness — Never saw the block of white-wood till in court; did not put it in the manger or know of it being there. Do n't know who put it there.

When I lived there I built a shed for the buggy on the south side of the hovel over where the hole was; the buggy ran in on the south side, and the shed was enclosed with slabs at the east and west ends. The shed was covered with straw; this was its state when I left there.

On the evening of the 10th of April I went to the house. Metcalf and his son were there, I gave the old man some fish; he put it on a barrow and we all went to his house. Stow was with us; did not go to the hovel on the occasion.

Mr. Van Dyke — We propose to show by the witness, that he had no knowledge of the revolving cannon, or the construction of these matches, and that he did not bring the matches to Gay's, all of which is strictly rebutting, and also that there never was any such understanding between him and Lake as is alleged.

Court — You may proceed.

Witness — Never carried any matches, or any such thing, to Gay's.

The witness being asked as to his having any knowledge of the revolving cannon, the testimony is objected to as cumulative, and also on the ground that there has been no proof of his having any knowledge of it.

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The question is allowed, as the witness was asked of it only on cross, not on direct or re-examination.

Witness — Titus may have described the cannon to me, but do n't remember that he did, and otherwise I have no knowledge of it. Know nothing beyond what I have told of the construction of these matches; never constructed or saw any constructed; never was even told the material with which they were constructed; never left or had any left at Gay's. On the Tuesday before the arrests I came to Detroit, and stayed till Thursday; on that morning I went west on the train to the Centre; that was the Thursday after the 11th. Left here a quarter before eight o'clock, A. M. I was n't out of the city till then since the Tuesday evening before. Came back that same evening with Williams.

On the 11th of April, I am positive I did n't meet Peeler and Kellogg; on that day Lake did n't get out of the wagon at the place described by Beeman *et al.* Did not come up that road out of the woods that day south of the corners, nor did Lake get out and go into the fields as described. Did n't on that forenoon go along into Leoni alone, nor did my horse run into Leoni that day. Remember that once between March 20th and the 1st of April, I was going into Leoni on the south road, my horse trod on a hoop and started a little; that is the only time that I remember my horse starting there.

The witness is asked to state what and who was in his buggy from the time he left home till he got to the Centre, on the 11th April.

Mr. Seward objects to the testimony, as it was gone into on previous cross-examination of witness.

Court, after argument, allows the question.

Witness — There was nothing in the buggy with us but Lake's overcoat; there was no box in the buggy; there was some straw; there was no bundle of any sort. Nothing was taken from the buggy, at the Centre, but Lake's overcoat.

Witness here shows in a map the route he took on the 11th, from Cady's to the Centre, being the road that runs along north of Beeman's lot, and does not run in any part in front of the west side of Beeman's lot. The point where Beeman, *et al.* said they saw Lake get out of the buggy, is in front of the lot on the west, and some eighty rods south of the route described by witness.

Witness — Know Cozier, who was sworn; he did not overtake or pass me, nor I him, that day. On that day I had a glazed cap and brown coat. Lake had a black broadcloth cap and dark clothes, save his overcoat, and that he had not on that day. Lake's health was very poor; he was very feeble, and complained a good deal.

In my house at Metcalf's we had a bureau; it stood in the east room. A partition ran across the house from north to south, and it was in the room thus partitioned off. Dishes, &c., were kept on the bureau; they covered the entire top. The room it was in was a dark room, only used for a sleeping apartment. One window was partly boarded up.

Mr. Stuart proposes to show that witness never heard of Westcott till he heard of him from these people at the Centre, and did not know him personally until February last.

Mr. Seward says, all that has been stated by the witness before.

Mr. Stuart — Then we will withdraw the question.

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Cross-examined — It was about the 10th of March, after breakfast, seven to eight in the morning, I sent Clarke for the augers. A. Metcalf and I were then starting for Francisco's. I returned without making any stop at Francisco's. On my return, the augers were at the house. I used the smaller one to bore holes for a rope to pass, to fix the buggy. There were three springs broken. Old Mr. Metcalf came to the house just as we were starting for the station with the buggy. No one but self, child, and wife, went in the buggy to the station. Do n't remember the sized rope I used. Am sure I bored two holes, and think four. I still have the same buggy; it is a light blue, red inside. My wife went to Niles with me that day; she was there with me before, some twelve or fifteen months. That time I stayed two nights at Niles; think it was Tuesday we went, and I returned the next Thursday. I went for her, I think, the following Wednesday, and returned with her on Thursday. On the morning of the 11th, I think, I did not stop at Grass Lake.

Mr. Fraser objected to this testimony, as not legitimate cross-examination.

Witness — Before the 11th, had been over the road from Beeman's Corners to the Centre. Within the last month, I have been twice on the ground, near Beeman's lot, where Lake was said to have got out the first time with Spaulding. We had the testimony of one of the witnesses along, and by it found the spot to stop at. It was ninety to one hundred rods south of Beeman's that we stopped with our buggy, and after we stopped, Spaulding pointed out the spot he supposed designated, as where Lake was said to get out.

On the 11th, I think, Lake and I got to the Centre, before twelve o'clock. After we left Cady's, and turned north, I think we went about a mile north before turning west.

When Spaulding and I were there, we went by Michigan Centre. On the 11th did not touch the railroad till we got to the Centre.

To Seward — I never forgot that Lake had his overcoat along. I am now sure I did not go by Leoni. There has been so much said of it, that I have thought more of it since, and examined my memoranda. On my previous examination, I had an indistinct recollection of my horse getting frightened at Leoni, on that or some other day. Since, I have thought over it, and am certain it was on another, and prior day, he so got frightened. From Michigan Centre to Leoni, is about three or four miles. There are three roads, all about the same distance.

I think on the 10th April, Lake came from Detroit to the gravel pit, on the cars. He staid at Metcalf's that night, and the next morning he and I went to the Centre, and in the evening, from the Centre to Grass Lake depot, and the next morning, about half-past eleven, he got on the train at Grass Lake and rode to Niles. I got on at Dexter.

The time my horse got frightened by the hoop, it was near the corner of Luce's store. Do n't recollect seeing Luce, or Coykendall there that day. Do n't recollect seeing any one at Leoni that day, save Charles Coykendall, Jackson, and Haddins. Did not see Myers, Williams, or Freeland. On that day, saw no one but Mr. Filley, at the Centre. Think I took a bite that day at George Haddins', in Leoni. I do n't know that this journey was ever out of my mind. I did not state it on my first examination. On this day, going to the Centre, we went through

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Leoni — did n't stop. Passed through there a little after ten, A. M. On that day Lake got out fifteen or twenty rods from the tavern, as we came into Leoni, from the Centre. Got out to see a man fixing a fence, whom we supposed to be Corwin. At the Centre, I think, we went to no house but Filley's. Do n't know where Williams then worked; never saw him work. At Leoni, saw Charles Coykendall; he was sitting in the bar when I went in; I asked him where Williams was. Williams was there, living at Coykendall's. My horse only ran a little; I hitched him to the post, with his head west. It was about one, P. M., when we got back to Leoni.

When I lived at Metcalf's, drew wood for fuel from the railroad. Reynolds drew most for me. No white-wood grown about there. Some grows this side of Ypsilanti. On this day, in March, Coykendall, Lake, and myself went east in the buggy to Grass Lake.

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Mr. Stuart states, that the prosecution will call no other witnesses.

Mr. Seward referred to the proposal made some days since, that the jury should go out to view the Beeman premises. It is not the intention of the defence to call any witnesses on that point, but as no definite answer was previously given, he now wishes to state, that the defence assent to the proposition, that the jury should view the premises, attended by the counsel on both sides. He will call one, and only one witness — Mrs. Fitch.

Mrs. Fitch, called for the defence — Was, in his life-time, the wife of Abel F. Fitch.

Question — What sleeping room did you and he occupy from July to September, last year?

Van Dyke objects to the question for the present, on the ground that it is cumulative.

Mr. Seward — It is in reply to testimony given by the prosecution; besides, the objection to cumulative testimony, is that the party should, if in their power, give all the testimony on the point where they first opened it. During Fitch's life-time, this witness was not competent, therefore the defence could not till now produce her.

Mr. Fraser — The general rule is, that all the testimony should be produced, and there is no exception in favor of witnesses who, in the interim acquire competency.

Mr. Seward — There is no rule of law against even cumulative testimony; it depends merely on practice, which is in the discretion of the court. We now ask the exercise of that discretion to produce a witness who was not before competent. I will, however, to avoid all question, ask where the defendant was on the 29th of August, 1850, which will make the testimony strictly rebutting.

Mr. Van Dyke — Justice to all parties concerned requires that the rule of law should be adhered to; it is cumulative testimony: after we have

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closed and met the case made by the defence, most of the rebutting testimony on this point, as for instance, Fitch's admissions, were ruled out, and we have to leave it very much as it was left by the defence. To admit this testimony now, would be to open the point again to both sides, perhaps lead to the opening of other points and the indefinite prolongation of the trial.

Court — The testimony is clearly cumulative. The death of Fitch was an accident which prevented the prosecution giving his admission in evidence, it is claimed that the same accident shall enable the defendants to give evidence which otherwise it is conceded they would not be entitled to; the court thinks the fairest use of its discretion is, to leave the parties in this respect as if no such accident had occurred, not to let it work for one and against the other.

Mr. Seward — We now offer to prove that Chas. Burr did not, on the 29th of August, 1850, visit Fitch in his bedroom.

Witness — Burr did n't see Fitch in his bedroom on that night; I did n't on said day direct Burr to go into the room to see Fitch.

Did Fitch in the latter part of August 1850, in the lower bedroom, say to you, &c.? (Reading the language as given by Westcott.)

Objected to, and the objection sustained.

Mr. Seward notes an exception.

Mr. Seward wishes to put two questions, one as to the conversation testified to by Westcott, and the other whether she (witness) assisted Amanda Fitch in writing out a statement of her testimony.

Both questions objected to, and the objection sustained and exceptions noted.

Mr. Seward now wishes to prove that Arnold was at Filley's on the 11th April — that Filley brought home fish on that day, and gave one to Arnold.

Objected to.

Mr. Seward — It contradicts Lake who said Arnold was not there—it is also proper, as by the Quigleys the design was evident to prove that Arnold was not there on that day.

Mr. Van Dyke — It is evidently cumulative.

The court thinks the evidence proper to the extent of showing him there.

Witness — On the 11th April saw Filley come to his house with Arnold along the railroad. Filley had a string of fish, he went into the south door of the kitchen, and Arnold went to the barroom door. Know it was the 11th, as Mrs. Tull, Mrs. Demick and Mrs. Cross were at our house that day.

Mr. Seward proposes to prove on the day shortly before Christmas, (10th December,) when Phelps was at Fitch's, Fitch did not go with him to the barn to show him the cattle, but refused to do so.

Objected to. Objection sustained, and exception taken.

Cross-examination waived.

Mr. Seward states that the defence has no further testimony to offer, and now close the evidence in the case.

After some conversation among counsel, the jury consulted together, and announced to the court that they would, as counsel seemed to desire

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it, wish to visit Beeman's field and premises alluded to in the vicinity, provided they could be accompanied by the court and counsel; and it was arranged that they should accordingly go, leaving from the Central railroad depot on Tuesday, the 2d September, at eight A. M. It was also arranged that the jury should view the premises around Johnson's Hotel and the depot.

The court adjourned to Wednesday, August 3d, at eight A. M.

WEDNESDAY, AUGUST 3d.

The court met and adjourned, with consent of counsel, to August 4th, at eight A. M.

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PART III.

ARGUMENTS OF COUNSEL.

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THURSDAY MORNING, September, 4, 1851.

The Court being opened—

Mr. Van Arman; May it please the Court—Previous to commencing my argument, I would suggest that it would be desirable to know how many of the Counsel are going to address the Court on behalf of the Defence. I am not, at present, aware of the desires of the Counsel of the Prisoners, and as it may affect the arrangement of my argument, I desire some explanation.

The Court said that it did not feel at liberty to dictate respecting the course proper to be pursued, but would suggest that some arrangement might be made by the Counsel themselves.

Mr. Seward. May it please the Court; Mr. Hewitt was employed as counsel for two individuals; one is dead, the other lives. I understand from Mr. Hewitt that he deems it his duty to address the Jury in favor of his surviving client, as he has taken the sole part in his defence, and none of the other counsel for the defendants have any connexion with, or responsibility with his client. Of my two coadjutors, Mr. Frink has had the chief responsibility. Mr. Howard has given the case as much attention as his other professional engagements would allow, and will wish to address the jury. Mr. Frink will open for the Defence, he will be followed, at a proper stage by Mr. Howard, and the argument for the Defence will be closed by myself.

I am advised that the Counsel for the Prosecution wish to open and close the argument, and that it is the usual practice of the Courts of this State, and this arrangement will be agreeable to us.

MR. VAN ARMAN.

Gentlemen of the Jury: Some three months ago it became my duty, as one of the Counsel for the Prosecution in this case, to charge these defendants now before you, with the perpetration of a series of extraordinary and atrocious crimes. At that time I stated to you, as it was my duty to do, fairly and without exaggeration, the facts as far as they were then known to us, which would tend to establish their guilt.

I endeavored then, to indicate to you, the Court, and the Counsel for the Defence, fully and fairly, the quality, character, and sources of the evidence to be adduced against them, and the course to be pursued by the prosecution, and now, after the lapse of three months, spent in laborious investigation, I again stand before you to review the vicissitudes of this exciting and eventful trial, and to rehearse to you, as far as may be deemed necessary, the facts developed by the evidence; having performed this duty, I shall so far as an active participation is concerned, take my leave of the case, and in so doing, transfer to the hands of others, a responsibility which, I can assure you, has weighed heavily on my mind.

In the performance of the arduous task before me, I can only promise the exercise of that fairness, candor, and truthfulness, which, in spite of all that has been said or insinuated to the contrary, I trust you have not failed to observe in the conduct of the Prosecution thus far.

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That I can bring to the discharge of this duty, talents adequate to its proper performance, I cannot hope. Your own intelligence, however, and the ability of the much abler counsel who will follow me, furnish a sufficient guarantee that the public interests will not suffer in my hands.

I shall endeavor, in earnest sincerity, to impress you with my own honest convictions and opinions, and should the sentiments I shall utter, meet the assent of your minds, and find a response in your bosoms, I trust they will not need the grace of eloquence to commend them to your consideration. You will kindly forget the humble source from whence they emanate.

It has been said that this is an important trial; its importance can scarely be exaggerated. To the Defendants it is important to the full extent of their entire earthly interest. To them it imports happiness or misery; honor or disgrace; liberty or bondage; in short, their earthly destiny.

To the Public it imports no less. If any reliance is placed upon any of the hundred witnesses who have testified here for the prosecution, then, indeed, are the public interest and safety deeply staked upon your verdict.

The evidence to which you have listened, develops not a single crime perpetrated by a single hand, proceeding from one corrupt heart, and directed against the interest or safety of a single citizen, but a long series of daring and dangerous felonies, originating in the combined purpose and will, and executed by the combined strength of a multitude, deeply perilling the safety, property and lives of the whole public, indicating, at the same time, the dangerous prevalence of opinions almost absolutely treasonable—the prevalence of opinions at war with social order, with the execution of the wholesome laws of the land, and with public safety; and although your verdict must rest upon a single issue, yet its importance is enhanced an hundred fold, by the long series of crimes developed in the course of its investigation.

The issue now to be tried before you, involves the inquiry, whether you have before you upon this occasion, the men whose daring and lawless outrages have, for two years past, rendered the greatest thoroughfare through your State a scene of danger and death. Your verdict will incidentally decide whether you have before you any of the persons to whom the public owe the loss of half a million of dollars, as well as the imminent peril of life to which thousands have been exposed along the line of this R. R. for the last two years, and in submitting this issue to you, I am cheered by the conviction that I shall leave it with competent and honest minds. From my brief acquaintance with you, (for you were all strangers to me at the commencement of this trial,) I am convinced that the just rights of all interested in this trial, will be safe in your hands.

Before reviewing the testimony it becomes my duty to allude to various general remarks and reflections which have been made by the counsel for the defendants from day to day, and which will doubtless be again reiterated in arguments.

At the opening of the trial, something was said about persecution and oppression, and in varions forms the charge has been reiterated;

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it has never been very distinctly stated, but enough has been said to cover the idea that this was the motive of the prosecution.

I sincerely regret that the counsel who made and have so industriously reiterated this charge, have not thought it expedient to state it more explicitly; I regret that it has not pleased them; fairly and plainly to point out the persons who have exercised this oppression and the particular manner in which it has been exercised. Whether the oppression consists in the fact or the manner of this prosecution, for tyranny and oppression are hateful terms and when charged upon any set of men, it becomes them to repel the charge, and I count it rather hard that I have to spell out the meaning of my opponents, and then endeavor to refute charges, which if true should have been plainly and fully expressed.

But enough has been said here and elsewhere, to make it imperative that the charge should be met. Is the fact of the prosecution oppressive, tyrannical? is that the allegation? not certainly if they are guilty; and to decide the question of guilt or innocence a trial was necessary. Your verdict will answer that question. But I would submit to any candid man in the State whether the conduct of these defendants had not justly subjected them to the suspicion of having perpetrated these crimes, and whether it was not just and necessary that the question should be tried.

From the most cursory glance at the evidence before us, I ask if the cause of the conflagration of the depot in question was unknown to the authors of the long series of aggressions and depredations to which you have listened, were known, would not the obvious similarity of the character, motive and tendency of such depredations, inevitably subject their authors to suspicion.

Whether guilty or innocent, could they with reason expect to escape suspicion, accusation and investigation.

It is one of the legitimate consequences of reckless and criminal conduct; that it often subjects its author to unjust suspicion and accusation. He who habitually disregards the law necessarily incurs the suspicion of his neighbors. If for a series of years a man had threatened and injured me, and I find my property burned, is it not natural that my suspicions should fall upon my enemy; upon a man whose conduct and language had proven him capable of worse crimes? He might be innocent, but he could not justly complain; for upon every principle upon which men act, my suspicion would be justified. Is it then in the fact of this prosecution that tyranny has been exercised—the fact or the manner? The charge has been made in general terms, and it becomes me to meet and refute it.

How has the prosecution been conducted? Has any thing harsh or tyrannous been attempted? Have the well known landmarks of the law been disregarded? Is it not conducted as an ordinary trial and before the ordinary tribunal of the country?

In former ages an appeal to a supposed overruling providence was directly made. The ordeal and the wager of battle (in which it was piously believed that God would aid and prosper the right) often decided the guilt or innocence of parties. Subsequently tribunals of justice were composed of a single judge to whose determination all ques-

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tions were submitted. For many centuries however, wherever the English tongue has prevailed, the trial by jury has superceded all other modes of determining disputed facts in tribunals of justice, and I believe it never has been doubted that their verdict, in criminal cases especially, furnishes the best and most reliable test of the guilt or innocence of the accused. Before a jury mainly of their own choice have these defendants been arraigned. Their trial has been conducted with the most scrupulous regard to the forms and principles of law, but the bail they offered was refused and they were deprived of their liberty. I will not tell you that for this the prosecution are no way responsible. Bail is taken or rejected according to the provisions of law, and for the policy of that law, its makers, and not we, are responsible. In all cases of felony charged, the law has vested the power and fixing the amount of bail and determining sufficiency of sureties, in the presiding officer of the tribunal in which the case is had. This discretion it is intimated has been abused. If it were so it would be beyond your power or ours to afford redress.

But if this charge is true, and had it been your prerogative to fix the amount of the bail, with thirty distinct felonies charged in one year, with the greatest thoroughfare in your State beset with danger, with the throng of life that is hourly passing upon that thoroughfare; the residences of these men along its course, their recklessness of life, and their fixed purpose of deadly hostility demonstrated by two years of uninterrupted aggression—I ask you, could you as men—could you with the regard which man owes to the lives of his fellow men, have fixed the amount of bail less? To have done so would have disregarded every dictate of prudence and experience. Is there a man who would desire the enlargement of these defendants? Would you have sent your wife and family upon that road with these men at large? Count up during the past two years the number of aggressions committed upon the road! Look at the testimony revealing the authors as clearly as if the finger of Providence itself had pointed them out, and then say if your lives and the lives of your fellow citizens would not have been deeply periled by the enlargement of these defendants?

But some have died, and it has been alledged, in consequence of their incarceration, and it will be so said again, although it can have no possible influence upon your verdict. They have died—and so have others. Who is responsible for their death? Had this trial progressed according to our wishes, it would have terminated long before the death of Mr. Fitch. Forty three days have the counsel for the defence retarded this trial—forty three days ago the verdict might have been rendered, and the innocent might have been at large. The counsel for the defendants will be likely to charge this delay upon us. I am lead by their past conduct to expect it—it will be quite consistent with the candor and sincerity of their general conduct here. This may answer a purpose elsewhere, but not here. You will bear me witness to the utter falsity of any such statement. This court, and you, gentlemen, will bear me witness that from the moment the indictment in this case was found, the prosecution have been ready at every moment and anxious to press this trial to a speedy conclusion. Every hour of delay which has occurred (as you well know) has been caused, and in many

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cases needlessly and vexatiously caused, by the defendants themselves for purposes of their own. If that delay and the protracted confinement of these defendants consequent upon it has caused disease and death among them, let the authors of that delay answer for its consequences.

But who are these men who now stand here and claim at your hands the charity of the law; nay, clamorously demand the most careful consideration for their utmost legal privileges, and in high and insolent terms arraign the administrators of *justice?* Have not these men for two years been in open and avowed rebellion against all law? Have they not openly proclaimed their utter renunciation of the restraint and authority of law—trampled upon all legal, social, and moral obligations and become and proclaimed themselves most openly, mere pirates, outlaws, robbers, and murderers? Is it not proved by the oaths of hundreds of witnesses—have they not proclaimed and boasted that they would set all laws at utter defiance, and have they not in pursuance of such threats committed crimes against the peace and safety of society such as justly to forfeit all protection and consideration from their fellow citizens?

If the individuals whose property they had destroyed or whose lives they had endangered had wreaked back upon their heads wrong for wrong—if instead of law, violence had been resorted to—had their property in turn been destroyed and their dwellings laid in ashes, a precedent is furnished by their own conduct and a full justification by their own openly avowed principles. The victims of these outrages have been tardy in the adoption and pursuit of measures of redress after two years of continued aggression—after having according to the boast of these defendants, sustained losses at their hands to the amount of half a million, they are compelled to seek redress, not by retaliation and refusal, but by mild, peaceable and legal means.—They invoke the protective interposition of the laws of your State—an investigation is instituted. Observe the course of these defendants.—They have delayed and protracted that investigation to the last possible moment—they have enhanced the public expense of the prosecution to an enormous amount by summoning multitudes of witnesses uselessly—they have at the public expense imported from a distant State perjured wretches to defeat the end and pervert the course of justice—men who have confessed their own infamy before you, and now having exhausted every subterfuge and artifice to evade the issue of this trial—having delayed and prolonged to the last possible moment; having wilfully and needlessly enhanced the expense attending it—these defendants by their counsel here as well as their numerous friends and abettors elsewhere, have the effrontery to charge this accumulation of expense and the consequences of this delay to us. Their grief at the death of some of their clients is clamorous, and only equalled by their indignant denunciation of us because we were unable to avert the legitimate consequences of their own conduct. They have even grown patriotic and loudly deplore the heavy pecuniary burdens which this trial rendered inevitable by the crimes of their clients has entailed upon the public. This effrontery is truly admirable—it outfaces assurance itself—it reaches the very sublime of impudence.

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Much has been said here about the motives of those who instituted and those who have conducted this prosecution. This is not at all unusual or unexpected. It is seldom that individuals who are accused of crime are quite satisfied with the motives of those who accuse them. In this case the basest motives have been charged and attributed to all concerned in the prosecution. Those who instituted it are tyrants and oppressors; those who conduct it here are minions: base hirelings bribed and suborned by the wealth of this overgrown corporation.

I shall only trouble myself to speak of such motives as are apparent. The secret motives of man can be known only to their Maker. But upon every principle of reason what in truth and reality is the motive which induced this prosecution. From all the circumstances as they lie before you, are you able to detect it? A number of persons residing in different parts of the country, upon the invitation of your legislature have invested within the limits of your State their money to the amount of many millions of dollars. This investment was made agreeably to the terms of a solemn and formal contract made and concluded with the public constitutional authorities, the authorized representatives of the people of your State.

By the terms of this contract the safety of the property to be created by these persons and the full and free enjoyment of their legal rights as defined and expressed in the contract are solemnly guaranteed.—Guaranteed upon the faith and honor and by the authority of a sovereign State. In violation of this contract and these guarantees that property has been destroyed—those rights infringed—within the jurisdiction and by the subjects and citizens of that sovereign State. Those persons now demand through the legal tribunals of your State that protection for their property and rights thus solemnly guaranteed. What motives would seem to induce such a demand. Are you able to discover or will the counsel for these defendants be able to detect any other motive or purpose than an honest and laudable desire to defend and protect their just rights, and yet for this appeal to the law in defence of their rights? They have been assailed here and elsewhere in terms of censure and reproach. Popular jealousy and prejudice has been aroused and stimulated by false accusation and calumny and no means omitted to turn against them the tide of popular hatred.

The motives of those who conduct this prosecution have also been traduced and misrepresented here and elsewhere—we have been called hirelings and minions. For myself, I cast back these vile terms upon the heads of those who uttered them. Can those gentlemen there in the plenitude of their charity conceive of no other than a mercenary motive for our conduct? For myself I will venture to mention another. My residence is in the interior of this State—I have a wife and children—necessity often calls them as well as myself over this Road, and more than once within the last two years have their lives in common with hundreds of others been exposed to imminent danger along that track, and as I am firmly convinced at the hands of these very defendants. The lives of my wife and children, gentlemen, have been plotted against, threatened and periled, on this Railroad, by base and bloody ruffians, and as God will judge me for the assertion, gentlemen, I believe the very men who plotted their destruction sit here before

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me. For the motive which prompts me to pursue them look into your own hearts.

But it has been objected to a large mass of the evidence in this case, that it comes from spies and informers, who were employed to watch, detect and report depredations, who have been paid for this service. You are not only asked to scrutinize severely the statements of such men, but to discard them altogether.

It is asserted that any man who will engage in such a disreputable employment, is by that very fact, disgraced and discredited.

Is this proposition true?

Is the occupation of watching that thoroughfare, of guarding and protecting the persons and property passing over it, and of detecting and defeating the plans formed against the safety of such persons and property, dishonorable? The Counsel for the Defence assert that it is—I shall attempt to maintain the contrary.

I know of but one standard by which to determine the merits of any particular occupation, conduct, or employment. That standard is *utility*—whatever is useful is honorable. This standard is simple and practical; it has direct reference to the object of all worthy actions, to wit: the public good. Any other standard is fanciful and fallacious, founded upon pride, prejudice or ignorance. The merits of any act or employment is determined by its effect, not by its appearance. Is it useful and necessary? If it be, then it is honorable. Was the employment of individuals to watch and guard that road necessary and useful? Was it necessary that those who heaped obstructions nightly along its track, should be detected and defeated? Whether they performed this duty honestly and faithfully—whether they have reported truly, is not now the question. I only ask whether, if honestly and faithfully performed, it was a service, in itself, useful and necessary. If these men have reported and sworn falsely, they have violated their duty; if truly, they have performed it. But I insist that the service or employment was, in itself, useful and necessary, and therefore meritorious and honorable. I do venture to insist that the faithful sentinels who have, at the risk of their lives, encountered the nightly damps and dews of summer, the chilling rains of autumn, and the blasts of winter, in guarding the lives of men from danger, and detecting the plots of assassins, if they have performed the duty truly and faithfully, have done the State some service. Read the long list of fearful accidents on this road, from the evidence before you.

One of the counsel has piously thanked God that no lives have been lost. Gentlemen, to the timely warning of these same spies, and the vigilance of the faithful agents of that road, and not to forbearance of these defendants, this fact is to be attributed.

Upon the intimation of Wescott, a hundred men were stationed on the line of the road between Grass Lake and Jackson, and at other threatened points, and the subsequent hostility of these defendants towards him, and their horrid threats and imprecations upon him, show that the precaution was timely and necessary. Indeed, nothing could more conclusively prove the utility and necessity of the employment of these same spies, than the deadly hostility of these defendants towards them. What cause can be alleged or supposed for this hostility,

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but the interruption and exposure of their murderous designs. Look over all this evidence, and you will find these defendants bringing no other accusation against those who were sent to watch the road, except that they were railroad spies. This was old Holmes's offence; and for this they sought his life. The suspicion of this caused them, at first, to avoid Sherman, and they took him into favor and gave him their confidence, the moment they ceased to suspect his design. Interruption and detection were all they feared from Woliver when they threatened his life; and treachery, not falsehood, was all the charge that Fitch, upon Gleason's authority, made against Wescott—his language was that he was a d——d railroad spy, and ought to be shot.

It was not the fear of perjury or larceny from Wescott, that caused such consternation on the receipt of Brook's letter; it was merely treachery, exposure they feared. Their safety demanded secrecy, concealment, and to insure it they wanted to take life even.

In the same proportion and degree that secrecy was necessary for their safety, in the same measure and degree was detection and exposure necessary for the public safety. In the same degree that they hated, feared and threatened spies and informers—in the same degree as these agents were odious and dangerous to them, in that degree were their services useful and necessary to the public welfare and safety, and and in that same degree do they deserve the approbation and gratitude of every honest and legal citizen.

But unfair means were resorted to by these spies; they were listeners, eaves-droppers, and resorted to ambush and stratagem to obtain information. By what other means, I pray, was the detection and exposure of the designs of these defendants to be effected? Could open, plain, fair dealing effect it? Should they have given these dedefendants warning and notice? What right has the cowardly conspirator to complain, that his midnight plots, conceived and matured in silence and darkness, are detected and exposed by means equally secret. How, and when, and in what spirit, were the schemes of these defendants contrived and executed. Were they not conceived in silence and secrecy, and executed under the cover and protection of night and darkness? Did they give the unwary traveller, against whose life they plotted, fair warning of the snare they had plotted for him? No! Under the darkness of night, with the cautious and cowardly tread of the lurking, guilty murderer, they crept from thicket and covert, to place the dangerous obstruction, or hurl the deadly missile.

Do these men now demand of us fair warning of the measures adopted for their detection?

> "Tho' law and space the stag we lend,
> Ere leash we slip, or bow we bend,
> Who ever reck'd where, how, or when,
> The prowling *wolf* was trapped or slain?"

As reasonbly might the blood-thirsty savage demand the usages of honorable and civilized warfare, and complain of ambush and stratagem.

We have employed against these men only the weapons of their own selection. Their acts were acts of night, darkness and secrecy —the means of detection were equally silent and secret.

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But men have been suborned to join and then betray them. History furnishes them a precedent in point.

A most dangerous conspiracy was projected by Cataline against the liberties of Rome, and was discovered and defeated by the efforts of Cicero, and the tactics employed, were similar to ours. When Cicero found out and determined to crush the conspiracy against the liberties and safety of his country, what did he do? Did he give the conspirators fair warning? No! He employed men to act as spies; suborned men of their number. He approached the chiefs of the Allobroges, who were then at Rome, he induced them to join the conspirators, to receive their hand and seal to the engagement. Then he sent a band of soldiers, who seized them when they were in company with the conspirators. Men alleged at that day, as the counsel have here: those men have listened to and joined the enemy, they are unworthy of credit. When he told them of the thunder cloud about to burst, they answered, the men who will listen to facts will manufacture facts; that with respect to the seal, the spies had forged it; that they were the conspirators and not Cataline. We concede that such a belief was natural—that a high patrician nobleman should herd with low rabble and base banditti, was incredible—just as one of the opposite counsel, (Frink,) alledges that it was impossible that a man of Mr. Fitch's respectability and refinement, would associate with such men as these defendants. But while this was argued in the Roman Senate, Cataline was forming his camp in Elmira. At last he rose in his place in the Senate, and said that he would drown the clamor raised against him in the best blood of Rome, and immediately fled. Although the witnesses had been suborned, the facts were true.

The influence of public opinion has been deprecated by counsel here. In their estimate of the value of public opinion in investigations of this kind, I fully agree with the opposite counsel, though I do not participate in his fears of its influence upon you. You must have learned, long before this, Gentlemen, its utter uselessness as a guide for our conduct in any line of life. Your own experience and observation has taught you how unstable, fickle, vain, and changeful it is. It is

> "Vain as the leaf upon the stream,
> And fickle as a changeful dream;
> Fantastic as a woman's mood,
> And fierce as Phrenzy's fevered blood."

The slightest and most immaterial circumstances are sufficient to change its current. What it approves to-day it condemns to-morrow, and he who obeys and submits to its dictates is involved in constant absurdity and contradiction; he is the slave of a fickle and remorseless tyrant. Trust it not, Gentlemen, it will prove a snare and a delusion. I would have you surrender no man to punishment in obedience to the more popular opinion, however clamorously expressed. No, Gentlemen. Instead of popular clamor, you will rather heed the voice of that monitor which God, for noble purposes, has placed in the breast of every honest man. You, Gentlemen, and not the public, are responsible for the verdict you shall render.

Again, it is asserted that the crime charged here is irrational, un-

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natural and improbable—that it is unnatural from its enormity, and improbable from the lack of motive.

All crime is irrational because it must always be opposed to the best and true interest of its perpetrator, and as it is the office of true reason to direct men to pursue their own welfare, all crime is opposed to the dictates of reason. But does it follow, that because it is unreasonable it is, therefore, unnatural; it would be if men were governed only by reason; but this, unfortunately, is not the case. In the government of human conduct passion always disputes, and often successfully, the empire of reason; and as all crimes are dictated by passion and not by reason, it is vain and absurd to search for rational motives for its perpetration. By observing the operation of the passions of men, not by the deductions of reason, are we enabled to detect the source and causes of criminal actions.

If we assume that men will act only from rational motives, we should be led to deny the existence of crime. Reason teaches obedience, not only to the laws of our nature, but the wholesome restraints of social law, and no rational motive can induce their violation. Yet we learn from the records of the past and our own experience, that men have constantly found motives to rebel against the one, and violate the other. We learn from the highest source, the very fountain of truth and knowledge, that from the very commencement of his career, man was a criminal and a rebel. Even the delights of Eden, and the mild and beneficent government of his Maker, could not repress his propensity to crime, nor conciliate his obedience; his earliest footsteps upon earth were marked with blood—even the blood of his brother, and every page of authentic history confirms the sad, but instructive lesson. From these sources and our own experience we are assured that, in every condition in which they may be placed, under every form of government, men, stimulated by passion against the dictates of reason, constantly violate alike the laws of God and man.

That they will, and constantly do commit crimes, is, therefore, not only probable, but certain.

But is there anything in the character and circumstances of the crime here alledged, which render it any more improbable than other offences which have been committed?

What are the crimes imputed to these men? They are the obstructions of railroads, and the burning of buildings. The principle of the latter is the crime of arson, and I would ask, is there a crime on record more common? There is scarcely a hamlet in the State, but at some time or other, has been lit up by the torch of the incendiary; there is not a railroad in the Union but has been obstructed by felon hands. But the counsel says that it is unusual and improbable that they should combine for this purpose. Let us see if it is unusual or unnatural.

Where a common feeling of hostility exists with an opportunity of injuring the object of their hostility, combination is the natural result of a common motive or design. The feeling will be communicated—the general motive will be communicated; this is natural and probable. Living, as these men lived, in close proximity; meeting, as these men met, daily, almost hourly; feeling, as they felt, a common hostili-

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ty to the railroad company, acting, as they acted, it was most natural and probable that they should associate and combine. There is every probability in its favor and nothing to oppose it. When together, they always talked of this railroad company. It was the common topic of their discourse, and I would ask the counsel if it was not probable that they should combine for this purpose. Is the principle of combination for the virtuous alone? do not wicked men combine from wicked motives? As we trace the acts of these defendants, we find them always together; from the earliest period to their final arrest; and I ask if there is not a coherence and a unity in all parts of this drama. The crime is not unusual; it is becoming dangerously common, as property of this description increases and comes in closer contact with individual rights.

I shall present this evidence to you, Gentlemen, under several propositions; but as much of the evidence which tends to establish one of these, may also have some bearing upon another, I shall not be able to make a perfectly corresponding division of it. I shall endeavor, however, to refer each portion of it to the proposition it seems most strongly to sustain. I beg your attention to these propositions, and especially desire you, while successively examining them, to exclude from your minds everything but the particular proposition under consideration—by so doing we shall avoid any confusion, and secure greater certainty in our reasonings.

My propositions are as follows:

1st. During the years 1849 and 1850, certain depredations were committed along the line of the Central Railroad, between Grass Lake and Jackson, on the tracks, cars, and other property of the Central R. R. Company.

2nd. These depredations were committed by some or all of the defendants in this case, either alone or in company with others.

3rd. In committing such aggressions, the said persons, defendants, &c., who committed them, acted in concert, in pursuance of a common design and agreement amongst them.

4th. The tenor of the contract, conspiracy, or understanding between the persons who committed such depredations, and in pursuance of which thep were committed, was substantially as follows: "That they would, singly and collectively, as often as they should have means and opportunity, injure and destroy the property, and interrupt and (if possible) ruin the business of said railroad company, by stoning, obstructing and throwing off the trains of cars from the track of the road, shooting at the passengers and workmen in said trains, and generally by destroying any and all property of said road which should come within their reach, and would continue these depredations until the railroad company should comply with certain terms or conditions agreed on between them."

5th. The said conspirators, or some of them, actually talked of, threatened, and attempted to procure the depots of said railroad to be burned.

6th. These designs were fully entertained by the said conspirators,

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and were actually in the process of execution up to the time of the burning of the Michigan Central Railroad Depot, at Detroit, on the 19th of November, 1850, and were never relinquished up to the time of the arrest of the defendants.

7th. The railroad depot at Detroit was burned by an incendiary.

8th. George Washington Gay was the person who burned it.

9th. These defendants, or some of them, hired and procured him to do it.

1. In August, 1849, a railroad tie was put on the track east of Michigan Centre, by two men.

2. In the fall of 1849, some wood-piles, about a mile and a quarter from the Centre, (west) were burned.

3. In the fall of 1849, some five or six guns were fired at the cars east of Michigan Centre, by which the engineer came near losing his life.

4. In June, 1849, an obstruction was placed on the track, on the Dry Marsh, upon a curve, intended to throw off the passenger train, but was run over by the engine Dexter.

5. In the season of 1849, numerous obstructions were placed on the track between Grass Lake and Jackson; a hand car was pushed ahead of the train, and obstructions often placed on the track between the hand car and passenger train.

6. Some time in the year 1849, a stick of timber was laid on the track between Fitch's and Filley's.

7. Same season, a dead cow was found drawn on the track half a mile west of Michigan Centre.

8. In June, 1850, the cars were stoned just west of Michigan Centre.

9. The mail car, containing the United States' mail and baggage was burned.

10. In July, 1850, the passenger train was stoned at Leoni.

11. In August, 1850, the Gazelle was run off three-quarters of a mile west of Leoni.

12. In September, 1850, on the night of Barrett's law suit, a tie was set up in a culvert to break the lamp, and a tie laid across the track to throw off the train.

13. On the same night the brakes were put on so as to retard the train in starting.

14. In September, 1850, an attempt was made to throw off the passenger train on the Dry Marsh, by removing the track aside.

15. In the same month, an iron bar or spindle was put in the frog of the T rail at the switch east of Michigan Centre.

16. The cars were stoned out of Fitch's garden, and again the same month out of Filley's garden.

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17. The cars were stoned on the road between Michigan Centre and Leoni.

18. In October, 1850, the Rocket was run off at the switch east of Michigan Centre.

19. In the fall of 1850, a wood pile was set on fire, and an attempt made to steal flour out of the cars.

20. In October, 1850, the Gazelle was thrown off at Leoni.

21. In October or November, 1850, a freight train was obstructed, and an attempt made to uncouple the cars at Michigan Centre.

22. In the fall of 1850, a pile of lumber, for fencing, was burned up just east of Filley's house.

These depredations were committed between Grass Lake and Jackson, along the line of the railroad, between the forepart of the summer of 1849, and the close of navigation in the fall of 1850. This catalogue is by no means complete, as the evidence will show you, but it comprises all the acts of which distinct evidence has been adduced During these seasons the cars, as the testimony will show you, were stoned, or in some manner obstructed, almost nightly; but of such stonings and obstructions I have only enumerated such as have been distinctly proved, and as I intend to trace to these defendants.

That these several depredations were, in fact, committed wilfully and intentionally by some person or persons, I expect these defendants by their counsel here to admit, for it would be worse than useless to attempt to deny or question this fact. That they occurred by accident is disproved, and will not even be suggested. These acts of aggression then, evidently designed for the destruction of the property of the railroad company, and perilling the safety and lives of hundreds of people, were wilfully and intentionally committed by some person or persons. From the very fact of their wilful perpetration, it follows logically and certainly, that an adequate motive or motives existed to induce their perpetration. I submit that this simple statement furnishes a conclusive answer to all that can be urged against the probability of this accusation, founded upon the lack of motive. These depredations were wilfully committed; their necessary, natural and only tendency and effect, were to destroy the property of the railroad company, and endanger human life. Whoever committed them, meant and intended these effects; no other supposition is admissible. The intention to produce these results necessarily implies an adequate motive, indeed the intention and motive are almost synonymous, convertible terms. But it may be said that, while this course of reasoning may prove the existence of a motive adequate to induce the obstruction of the cars, and the other depredations complained of, does not prove the existence of a motive adequate to induce the burning of the Depot.

From the very nature, character and tendency of these depredations (saying nothing of the other evidence in this case) what was the motive of those who committed that long catalogue of crimes? Their effect was two-fold: destruction of property, and peril of life; but as the destruction of life was intended to be promiscuous and indiscriminate,

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the acts could not have been induced by hatred or malice towards the individuals whose lives were thus endangered. Those persons could not have been even known to the perpetrators of such crimes, and therefore, were not objects of hatred or revenge. Hatred and malice towards those whose lives were endangered by their acts, was not the motive. There is but one conceivable motive to which these acts can be referred, and that is, rank, bitter, deadly hostility towards the owners and agents of that railroad; by the destruction of their property, they would injure them directly; by endangering or destroying the lives of passengers on the road, they would drive business from its course, and thus indirectly injure its owners. Hostility to the railroad company then, was the real only motive for these depredations, and that so bitter and deadly, that no considerations of humanity, no regard for the lives of men, not even those of their own friends, and perhaps kindred, could check its sway. To form any estimate of the depth and energy of the hatred and hostility which urged men to the perpetration of these crimes, you must contemplate the fearful consequences they were ready to incur in order to gratify that hatred and hostility.

An ordinary murder may be committed under such circumstances of mitigation as to imply but a slight degree of malice. It may have been done, on strong provocation, in a moment of passion, and repented of as soon as done. But the man who can, coolly and deliberately wait the approach of the heavily laden train, freighted with human beings of every age, sex and condition, from the tender infant reposing in the arms of its mother, to the gray-haired man trembling on the brink of the grave, who can look upon the thoughtless and happy assemblage, as, unconscious of danger, they are hurled onward in the rapidly moving car, and then devote them, one and all, to destruction, to a sudden and terrible death, must be possessed of a motive as strong as earth or hell can furnish. This very act has been done, literally performed—the catastrophe was averted—but the attempt was made, not once, but repeatedly; this will not be questioned. The motive for the act, therefore, existed, and that motive was merely hostility to the railroad company. Now was that motive, wherever it existed, adequate and sufficient to induce the burning of a building? That is the question. Would the man, who for mere revenge, and for the purpose of injuring the company, endanger the lives of hundreds of innocent persods, burn a building for the same purpose? Which of these acts implies the deepest malice or the strongest motive? I insist that when we show that this catalogue of depredations have been committed wilfully by some person or persons, we clearly prove that a motive did exist in the hearts of the persons who committed such depredations, fully adequate to induce the perpetretion of the crime here charged.

A sufficient motive then is proved to exist somewhere. This reasoning, it will be observed, has no tendency to point out the person or persons who committed these crimes, but only goes this far; 1st. That the fact of the wilful commission of the depredations necessarily implies an adequate motive. 2nd. That from the character and tendency of these acts, the only conceivable motive adequate to induce their perpetration, must have been hostility to the railroad. 3rd. That the

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same motive, in a much slighter and feebler degree, would be adequate and competent to induce the burning of a depot.

We come next to the inquiry, who committed these depredations? They have been committed, intentionally and wilfully, by human hands, and the men who have committed them, are within your State, and within the jurisdiction of your laws, and the next question I shall submit to you is, whether the men who committed them are before you. Several considerations tend to render it highly probable that the depredations in question, were committed by persons residing on the line of the road, and in the neighborhood where the depredations occurred. Ill will and hostility to the road was, as I have before shown, the motive and cause of their perpetration. Such hostility could hardly exist among men living at a distance from the line of the road, and whose connections with it, were in no way intimate. The hostile motive plainly indicated by the character of these acts, as well as the evidence in this case, could only have arisen, and did actually arise from injuries done to property by the passage of the cars over the road. These injuries could only occur to the property of those living directly on the line of the road. Again, not only is it highly probable for the reason above stated, that the depredations proven, were committed by persons living on the line of the railroad, but it is also highly probable for another reason, that they were committed by persons residing near the very locality of these aggressions; for as the railroad is equally exposed to depredations at all points, and could be about as well and successfully obstructed at one point as another, it is very improbable that a man living along the line of the road, and seeking to obstruct it, should select a point at any considerable distance from his residence for that purpose, for, besides the inconvenience, much greater danger of detection would necessarily be encountered.

For these two reasons it is insisted that the persons who committed these depredations, lived along the line of the road, and in the neighborhood where these depredations occurred. These depredations then, were certainly committed by men harboring hostility and animosity against the railroad company, and probably by men living on the line of the railroad, in the immediate vicinity of their occurrence.

The depredations enumerated and proved here, (as it will be remembered) all occurred between Grass Lake and Jackson, the most of them in the immediate vicinity of Michigan Centre and Leoni, and between these two points in the County of Jackson.

In prosecuting our inquiries for the author or authors of these depredations, it will aid us much to remember these two conditions: for although a man residing in the vicinity on the line of the road, and manifesting hostile feeling to the road, *may yet* be innocent of these depredations, still by men, harboring such sentiment of hostility, and probably residing in that vicinity, were these depredations committed.

Now, In the next place I insist that these defendents, or some of them, either alone or in connection with others, committed these depredations—all, or substantially all of them.

I charge it, and I shall attempt to prove it so fully, that the mind shall rest upon it as a fixed fact; so fully, so surely, that no man shall doubt it from this moment until these men lie in their graves.

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I undertake to establish the fact so strongly, that this, at least, shall become a fixed and settled certainty, that cannot be gainsayed or denied, and for this single object, I beg leave to call your attention to the testimony given that the defendants committed these crimes, each and all of them, and in the first place, if I show that they committed any, or the most of these acts, committed them with the knowledge and consent of all or a part of these men, just so far I have established my point, if I show a sufficient motive for one aggression, the presumption will be strong that the other aggressions against the interests and property of the same individuals, were committed by the same men. If we prove a competent motive against these men, that they lived in the vicinity, and if I can prove one act of aggression clearly against them, I ask if you cannot rest upon it as a strong probable argument, that the same persons committed the other acts. They were all of the same character, dictated by the same motive, directed against the interests of the same men. How is it with a common action of trespass? If I detect a man cutting timber upon my land, and a number of trees have been cut in the immediate vicinity, likewise upon my property, the person so offending is charged with the whole as an action of trespass, the law presumes against him, and unless he can prove his innocence, he is guilty. So if I prove that these men committed a part, I assert that it raises a strong presumption that they committed the whole. Again, if I show that these defendants had a particular and minute knowledge of the perpetration, the time and the mode in which each crime was effected, without being informed by others after the occurrence, it will tend to establish their guilt. If I show that they met in numbers, frequently daily; that their usual talk was about depredations upon the railroad, indicating, by their language, a malicious purpose towards the road, threatening daily to commit depredations upon the road, that will likewise tend to establish their guilt.

I beg you to bear in mind, Gentlemen, that I am discussing now, only the single question, whether these defendants committed these crimes or not. I am not at present speaking of the arrangements or combination by which they were effected. I wish to confine your minds, at present, to the question whether they committed these crimes or not, just as if this was the sole issue of the trial, and I beg of you to follow me in my argument upon this point, and I wish particularly to remind you, it is not necessary for my purpose to prove that each and every one of the defendants actually aided and abetted in each separate outrage, or even were actually present at the time of the commission of each separate offence. It is sufficient to show that they were cognizant of the offence—that they consented and assented to it. I do not expect to show that each of these defendants were present at the time each obstruction was laid, but I do propose to show, from the circumstances in evidence, that they were all acquainted with, and had agreed and assented to, planned and advised them.

Let us proceed to the evidence. From the testimony of Harmon Spaulding, —— Hewitt, Otis Kingsbury, and Charles Rogers, we learn that some time in the month of August, 1849, an obstruction was placed on the railroad track a little east of Michigan Centre, and they relate to you the circumstances. At the point where this obstruction

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was placed, the railroad track runs on a curve, with a descending grade to the west. The curve, of course, interposes obstructioos to the view of the road, while the descent renders it impossible to check the speed of a train approaching from the east. These were circumstances well calculated to give deadly effect to the obstruction. Mark another circumstance. By the testimony of these and other witnesses, it is proved that at this point of the road, beneath a thin stratum of soft marshy soil, slumbers a concealed lake of nearly a hundred feet in depth. At the sharpest point of the curve, on the most dangerous part of this marsh, where the yielding and treacherous soil would not sustain, for a moment, the weight of the ponderous engine, just where its effect would be most sure and fatal, was this obstruction placed.—Mark, again, the freight train which, by a miracle escaped destruction, in passing over it, came unexpectedly upon the time of the passenger train. This circumstance, as well as the admission of those found near the spot, clearly proves that it was for the passenger train, heavily ladened as they usually are at that season of the year, that this horrible snare was laid. This conclusion is inevitable from the testimony. Little did the thoughtless and merry company who left your city on that bright summer day, and commenced their rapid journey across your lovely peninsula, dream of the deadly perils which beset their path. Little did the admiring traveler deem, as he gazed upon the smiling landscapes, the sunny fields and verdant groves, as they passed successively under his eye, that such a land could harbor the bloody assassin—that beneath the shade of those sunny groves crept, with stealthy tread, the murderer, against whose wiles and snares the arm of law was powerless to protect his life. Little deemed the mother, as she fondly played with the infant slumbering upon her breast, that its winding sheet, and hers, was prepared in the cold bosom of that sunless and dismal lake! And yet it was for them—for that fated train, thus heavily laden with human beings, that the fatal toils were set. In the silent depths of those stagnant waters, where the blesssed light of heaven would never smile upon them, their grave was dug.—Well does evidence here justify the brutal and savage boasts of these defendants: that they would need neither coffin nor sexton! Well may the counsel here piously thank God for their miraculous escape, for nothing short of his interposition could effect it.

Who placed that obstruction? Messrs. Spaulding, Kingsbury and Hewitt, who were on the train, tell you (and they are supported by the testimony of Charles Rogers,) that on that day they accidentally and unexpectedly preceded the passenger train, with a train of freight cars drawn by the locomotive "Dexter"—that as they approached the dry marsh, at a rate of speed that was less than was usual with passenger trains, they discovered the obstructions, but not in season to stop the train and avoid it. When the engine had been reversed, and the breaks put on without effect, and it became evident that the train must go over the obstruction, two of three men—strong-hearted, resolute men, inured by their occupation to danger—leaped in dismay from the advancing train, prefering to encounter the danger thus incurred to encountering the more imminent peril before them. Spaulding was unable to extricate himself, and remained on the locomotive:

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by a miracle, as these men tell you, on their oaths and experience, the train ran over the obstruction without being thrown from the track. The moment it had passed the obstruction, Mr. Spaulding looked ahead, and who did he see? There, on the track of the railroad, but a few rods ahead, at the best point to observe the effect of the obstruction, watching and waiting to witness that effect, stood in plain view Abel F. Fitch, Ammi Filley, Corwin, and others of these defendants. As the train, with Mr. Spaulding on it, approached and passed these men, there, under their very feet, before and behind them, he encountered other obstructions, placed, and evidently intended, to render the destruction of the expected train doubly sure. It was broad day light, four o'clock in the afternoon, and these obstructions were before their eyes, and under their feet, and they must almost have stepped on them, in coming from their dwellings, to reach the spot where they stood. But this is not all; mark the conversation that ensues:

As Spaulding approaches, struggling to stop the engine, and encountering new obstacles and obstructions at every revolution, and when, at length, he had succeeded in stopping it, and stood contemplating the danger he had so narrowly escaped, and just as his two companions, stunned and bruised by their leap from the engine, came up, Fitch, in a tone of mockery, asked him, "What's the matter?" and upon his replying that "some hyena had obstructed the road, and that he had run over the obstruction in safety," Fitch remarks, "Spaulding, by God, you can never run your cars in safety over this road, until you pay up for cattle." Mr. Spaulding remonstrates against this mode of obtaining redress for injuries, and urges his own innocence of wrong and the injustice of endangering his life. To this, one of the company replies, "we would as soon kill you as any one." When one of those with Spaulding stated that the obstruction must have been placed for the passenger train, Filley, as the witnesses think, said, "they were aware of that," and when Spaulding, becoming indignant at their threats and language, tell's them that they will resort to arms, if necessary, to defend the road from depredation, and his life from danger, Fitch applies the threat to himself, and tells him in language of defiance, to come on, that he, Fitch, had guns, and men to use them, and will fight the whole damned company.

The witnesses further state, that the manner of Fitch and others with him, was hostile, and they seemed desirous to get up a fight, and threatened to whip some of us. Now, Gentlemen, who, I repeat, placed these dangerous obstructions on the track of that railroad.—Take the testimony of these four disinterested and credible witnesses, as it has been rehearsed to you, clearly proving the presence of these defendants, at the very scene of the expected disaster, their position amidst the thickly scattered obstructions lying under their very eyes in open daylight, consider their language and bearing towards the unfortunate individuals who had narrowly escaped death before their eyes, and two of whom were suffering from injuries received. What are the feelings they manifest? regret and sympathy? Do they tender assistance, express horror at the deed, and detestation of its authors? The only regret they testify, is at the failure of the attempt. Instead of sympathy and assistance, their language testifies the deep-

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est hatred, and they threaten openly to meet with deadly weapons, and oppose to the death, all who shall seek to guard the road against the occurrence of similar outrages, and openly assure Mr. Spaulding that the road can never be passed in safety until their terms are complied with.

The language of Fitch and his associates on this occasion, clearly indicate the existence of a motive sufficiently hostile and deadly to induce the perpetration of the crime. They were on the spot with full opportunity to commit it—their position and attitude proves their knowledge, and strongly indicates their authorship of it. They fully justify its perpetration, and threaten, in effect, the frequent occurrence of similar outrages, and when charged with it almost in direct terms, so far from denying, their language is almost tantamount to an admission. And, Gentlemen, if you need further evidence to connect these men with the perpetration of this crime, you will find it in the evidence which will be rehearsed to you, showing their threats plans and attempts to perpetrate this and similar outrages.

On or about the 20th of August, 1850, the engine Gazelle, on her passage eastward, with a passenger train, in the night was run off about a mile west of Leoni, at a culvert, from a bank some six feet high. Jacob Woliver is a witness upon this point.

Mr. Woliver, gentlemen, was an accomplice of these men. Mr. Woliver is one of the most unfortunate of mankind. He possessed, originally, many of the elements of a good man, of full ordinary intelligence, as you will doubtless have perceived. When he had the evil fortune to fall in with these men he might have laid claim to some respectability, but from the time that he became acquainted with the men who surrounded Filley's tavern, he became the mere tool as well as the wretched victim of their arts. It appears that he drank whiskey to such an extent that it defied the power of computation of Mr. Filley—so they agreed by way of compromise to call it a barrel, and let it go at that. He became inebriate—he became besotted:—worse than the worst, bribed by the love of rum, as many a better man has been before him. Woliver is called upon the stand thus polluted by his vile habits and associates, still we call him upon the stand.

Do they impeach him? Can they complain that we use him as a witness? Who made him what he is? Who used him? Who associated with him? Fitch and Filley. He is their friend at least. It is taking advantage of their own wrong to attempt to impeach him.—They have no moral, legal, or equitable right to point the finger of scorn at him. They adopted him—gave him currency—used him—ruined him—plunged him in the depths of vice and crime—from whence we have dragged him. I have the utmost hope that he is a reformed man, and I entertain no doubt that he has told the truth. His statements are confirmed by all the circumstances connected with the case. View the man fairly. Without any vicious propensities, he has acted as the tool of others. He has acted as the vile instrument to work out the purposes of worthless men. He is before you—give his testimony such weight as it deserves. He says he was amongst them, as bad as the worst, and went with them in the prosecution of their infamous schemes, as far as he who went farthest. He makes a

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clear breast. Woliver swears that he (Filley,) and the Price boys threw off the Gazelle. (See his testimony.)

That it was thrown off at the time and in the manner stated, there is no doubt. He swears that he was one who did it; that Filley, who sits before you with a face of innocence, was another.

Here is a document, which I will offer as evidence. This was a circular or warning directed to the Price boys, and purporting to be signed by Willard Champlin, ("by order of the committee,") requesting the Prices to be present to assist to throw off the cars.

. Mr. Taylor tells you that he found this letter the next day after the Gazelle was thrown off, on the very spot near Leoni. It reads thus:

"Mr. Price—I want you to be at the first mile post, west of Leoni, upon Monday night, at ½ past 9 o'clock. We intend to run the cars off the track somewhere about there. Be sure and be there.

By order of the committee.

WILLARD CHAMPLIN."

It is not difficult to say whether this warning is in a feigned, forged hand. It appears to me to be perfectly plain that it is the natural hand writing of whoever was its author. It is not a forged, disguised hand, the spelling so perfectly comports with the style of writing, both indicating a bad scholar, and a person who had written but little. You remember the testimony as to the hand writing, and how it came there.

Mr. Holmes, who was once one of the defendants, and whose position is singular enough, tells you that he knows the hand writing of this person—that he has seen him write, and to fortify his knowledge, he produced before your eyes a piece of writing executed by Chamlin. He compared the two, and swore that it was Willard Champlin's hand writing.

Holmes was discharged, and went home. We learnt that he was a mere victim to his own fears of these men. If he had plotted, it was in the fear of his life. We ascertained that he was a man of but feeble courage. He had nearly lost his life upon suspicion of being a railroad spy. He was acting in fear, and was scarcely responsible for his conduct. He went home. Of what followed we have no knowledge. We cannot tell you what measures of intimidation and menace were resorted to. But he came back to disprove his own testimony. He did his best to please his family and neighbors who sent him back here. He said the writing still looked like Willard Champlin's hand writing, that he could see no difference except in the letter W,; but that he thought upon the whole the writing looked like Mr. Taylor's. That was the extent to which he was induced to modify his statement.

Now, he had seen Mr. Taylor's natural hand writing. If Taylor's natural hand writing looked like this, he is an illiterate, ignorant man, unaccustomed to writing—he is but a poor scholar—and I ask you could he forge and counterfeit the hand of another man if he is no better writer than the person that wrote this? He is a mere tyro—he can scarcely scribble a sentence.

None but an accomplished penman can successfully forge or imi-

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tate the hand of another, and the most difficult of all hands to forge is the awkward scrawl of a novice.

It is much less difficult to imitate and forge the hand writing of the most clerkly writer than that of a man who could not write his name, and if Taylor is, as Holmes swears he is, a poor writer, I ask you if it would be likely that he would attempt to execute a forgery? Could he do it so that Mr. Holmes could verily believe it to be genuine?—Holmes proves that his writing resembles this. He can scarcely write his own name: that he is illiterate, his own testimony before you proves.

I did not ask Taylor if he wrote it; it never occurred to my mind. It is for you to say whether he hid. If Willard Champlin wrote it and Price dropped it on the night and at the place where the Gazelle was thrown off, what, then, does it prove? what is its effect? It proves much more than the participation of these men in this particular offence—it would show a connection—it would show a plan. It is signed by order of a committee:—it would prove their organization, and their participation in the various acts:—it would prove that the person to whom this was directed, who had this in his pocket and dropped it, had been concerned in throwing off the Gazelle.

But the brother of Willard Champlin testifies that it is not his brother's hand writing; but when a very plain piece of writing was put in his hands, he could not read at all. How much weight you will give to the testimony of a boy on such a subject, who cannot read, I shall leave you to decide—especially when that boy is a brother of the def't. I shall leave it without comment.

I will now read the testimony of Mr. Monroe. (Testimony read.)

What feeling prompted the anxiety of Freeland to ascertain the amount of damage caused by throwing off the cars and the consequent collision? Whether it was prompted by a malicious spirit I shall leave you to judge. He spoke of guns—that he would shoot a spy as quick as a squirrel. He spoke of running off the Gazelle, and said the Company had better pay up. Whether he was connected with the cause of this dangerous accident will be better seen when we have examined the whole of the testimony. I allude now to the spirit he manifests upon that occasion. Did he speak of what might have ensued with indignation? Did he express any solicitude that the public should be guarded against such outrages? No. He enquires the amount of the damage—says the Company had better pay up, the whole country is against them; that he keeps guns to shoot those who attempt to guard the road. When told that the owners would protect their property and the lives of passengers on the road, he said he kept guns to shoot them. Was he one of the combination represented by the committee?

I will now allude to Wescott's testimony. He speaks of Fitch. I shall not now speak of his general credibility. I shall allude to a custom of Mr. Fitch. Fitch was a cautious man; he had more sagacity, more discretion than the rest; he did not boast openly of what he had done. He was not only shrewd, but witty and facetious, and frequently indulged this humor. He speaks most characteristically of this accident. He admits his knowledge of it, but not his participation. He

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says the boys did it. It was the boys. Just so. During the month of April he said that Elder Limbocker had stoned the cars. He was sounding Wescott at the time. He was not sure of Wescott's disposition, and thought it proper to veil his real meaning under that figure of speech.

He would not say I have stoned the cars, or I have caused them to be stoned, but would give the same impression in a different or guarded form.

Elder Limbocker was a worthy, pious, respectable old gentleman, and never had been known to do anything particularly important either one way or the other. In its very absurdity consisted its wit and point.

Again, as to the running off of the Gazelle, he says very wittily, that the locomotive had got dry, and had gone to the marsh for water. "We knocked them to the tune of 6000 dollars." Here, at length, he forgets his reserve; he indiscretely admits his connexion with the cause of that disaster.

You will recollect what Filley said to Wescott about the running off of the Gazelle, soon after that accident occurred. He attempts to disguise his meaning slightly, also under a figure of speech; and his fancy naturally suggests that of a hunting excursion. He says he wants to go a cooning; says it was a large coon we caught the other night; we lost the tail of it, and that a bar and a sledge are the instruments he uses in catching a coon. and that the best place is to go along the Rail roak track. As to Wescott's general credibility I shall have something to say soon.

But could human ingenuity invent such a tale as is here related.—Could Wescott or any man invent such a speech as is here put into the mouth of Filley? Is it not characteristic of the man? Was it not his constant custom to trifle with crime, and does not this bungling witticism of his, and the exultation and levity with which he boasts of his participation in a daring, outrageous crime against his fellow citizens strongly identify their author.

And is it not past all human ingenuity that Wescott should have placed these words in his mouth. I cannot give the reasons why you should believe this, nor explain to you clearly why I have never for a moment doubted it. It is difficult to explain why he could not have invented it, but that it bears the stamp of truth you all feel. So with Fitch that the locomotive had gone to the swamp for water, because they were dry—we knocked them to the tune of $6000.

The counsel may say that they are naked admissions, and therefore, weak and suspicious evidence. Admissions are weak only for a two-fold reason. The danger of their being misunderstood or misrepresented. Wescott says that they were the exact words written down at the time immediately after the occurrence. There was no chance for misunderstanding. They were their own admissions in reference to what had just occurred.

On this same point, (the throwing off of the Gazelle) we have the further testimony of Westcott that subsequently in the month of October, he saw Filley pay to O. D. Williams the sum of three dollars at Filley's tavern, and from the conversation which he overheard and re-

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lates to you, it seems to have been in payment for Williams' participation in this affair. Wescott is confirmed here substantially by Wells, and another young man, who was present. Here is a seeming inconsistency. Woliver tells you that he, Filley, and the Price's threw off the Gazelle, and seems to have no knowledge of any participation of Williams, and there would seem to be an absurdity in the fact that Filley, who was one of the persons who committed the act, should pay Williams, who was not. The testimony of Wescott, Wells and the other witness, however, show that the largest part of the price had been paid by Fitch, and when we reflect that Fitch was a saying rather than a working member of the associaton, and that he and Filley being the only men of prosperity, furnished mostly the means and sinews of this warfare, we need only to know that Williams participated in the exploit to reconcile the seeming inconsistency of the state of accounts between them, and we learn from the testimony of Phelps, that in conversation with the other defendants, Williams stated that he had been the cause of this disaster, boasted of the skill with which he had plannedi t, and said that although he was at home and in bed at the time, he was its real author.

Again, Woliver says they got the bar used in throwing off the Gazelle at a saw mill in the way, while Williams boasts to Phelps and Lake that he furnished the tools for that purpose. Williams might have previously carried the bar there. The expression might have related to some other tools used; Williams might have wished to magnify the services he had rendered—or Phelps and Lake may have mistaken the tenor of this remark—at all events, these slight descrepances tend strongly to disprove any complicity or understanding between the witnesses, for if Phelps had derived his story from Woliver the discrepancy would have been avoided. I will venture to remark that if there should appear in the testimony of these witnesses upon this point, a slight discrepancy, instead of impeaching or discrediting them, it is a badge rather of truth.

General consistency with circumstantial variety are according to all legal and moral writers the strongest indications of truth in human testimony.

In the fall of 1850, a pile of lumber belonging to the R. R., Co. intended for fencing the R. R., was lying just east of Filley's house by the side of the R. R. On a certain night during the fall it was burned up. Old Mr. Dexter slept that night in an upper room of Filley's house. He was ill, and his son stayed up with him. Filley slept in a bed-room below in rear of the dining room. Just before the cars came along, old Mr Dexter heard some one come carefully in at the front door of Filley's house bare-footed, and go through the bar-room and dining-room to Filley's bed-room. In a few minutes afterwards, and after the cars had passed, they are alarmed by the cry of fire, and this pile of lumber is found to be in flames. Young Dexter desires Filley to go with him to put it out, and he refuses on the plea that he is afraid that there are Railroad spies around, and if he is found at the fire it will be laid to him. Young Dexter goes, however, and finds that the lumber pile has been fired at two places, at the opposite ends, and the fires are not yet united. The cars had passed, but there was

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no wind to blow the sparks to this lumber, saying nothing of the impossibility of its taking fire in two places at once.

Now these Dexters are no friends of ours, nor does the slightest suspicion rest upon their testimony. But we have other and still more conclusive evidence from one of the defendants' own witnesses.

Mr. Hudson for the defense is examined. What does he say.—That upon the night of the fire he was there while it was still burning. That he examined a peculiar track leading from Filley's house towards the lumber, and going back again to Filleys house; that Filley had a peculiar foot with a broad ball; that he cannot swear to the track, but that it was just such a track as Filley would make, and no other person could make in that community. That the next day he met Mr. Filley and said what made you burn the pile of boards, and Filley said they could build no fence near Michigan Centre. Did he burn those boards? What is the opinion of the neighbors on the subject. Let us look at the testimony of Mr. Dixon.

Mr. Van Arman here read the testimony of Mr. Dixon as to what Grant (one of the defendants) said amounting to an admission that the boards had been wilfully burned.

Who burnt the pile of boards? There was no wind—it was fired in two places at once. What was Filley up for. Mr. Hudson would not make the false track, nor does he swear to more than he can help. But he says it was Filley's track in substance, and taken in connexion with other evidence it is conclusive.

Again, you will recollect that a tie was set upon the track for the purpose of breaking the lamps, on the night of Burnett's law suit in the fall of 1850.

Here Mr. Van Arman reads Mr. Woliver's testimony that he and Filley did it, and Mr. Wells' testimony confirming him, also that of Dixon who swears that Fitch told him that he went up to the spot where the collision occurred, with a dagger in his sleeve as he did not know but he should want to use it.

Is there not a perfect confirmation of Wolliver's statement? Dixon some of you may know. He has been Deputy sheriff for the county of Calhoun for a number of years. He is a man of most scrupulous truth and honor. He is one of these men who have been branded here as spies, and you are told that having watched to prevent these depredations, you are not to regard his word. Nevertheless some of you know him, and knowing him you will believe him. He confirms Woliver to the letter, and if Woliver's statement of that is true will you not believe the balance of it.

Wescott tells you that he was at the law suit of Barrett, the day before this depredation was committed, and was solicited by Fitch to stay and come home with him; *he wanted to initiate him; something was going to be done; something would be up.*

Wescott, however was taken sick, and compelled to come home with Spaulding before Fitch came. (See Wescott's testimony.)

Spaulding fully confirms Wescott as to his being at the law suit, and the occurrences there and his manner towards him, (Spaulding.) (See the testimony of Harmon L. Spaulding.)

The next morning Fitch told Wescott of the particulars of the ob-

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struction, and explained how it was done; said he went up to the spot while the cars were detained, and they laid it to him, but d—n them, he told them he did not get home in season. He also told him that he Fitch and Filley secretly set the brakes while the men were busy to bother them. Wells swears that before this accident he heard Fitch explaining the plan of it to Filley and others, and subsequently heard them speak of the success of the plan.

Wescott and Dixon both swear that Lemm came home with Fitch and stayed with him that night, and Wescott and other witnesses swear that the puting on the brakes and delaying the train was often mentioned and laughed about afterwards.

AFTERNOON SESSION.

Mr. Van Arman—the next depredation to which I shall call your attention is the running off of the Rocket about the first of Oct. 1850, when going west with the passenger train, at the switch east of Michigan Centre.

Mr. Van Arman here read the testimony of Mr. Sherman.

Mr. Sherman was one of the first witnesses called to the stand, and you must remember his manner, appearance, and general demeanor. In his history of his life, he tells you that he is a laboring man—he has worked upon a farm—upon another man's farm—not his own. He was employed by Mr. Clark as a watch for the Rail Road Co. about the time of the State Fair. Mr. Wescott had communicated to the Company the fact that these defendants were about to commit formidable depredations at that time. Sherman could not have failed to impress you very favorably, and I beg you to remember that not a word of his testimony has been contradicted. But upon the contrary there is not a fact that he has stated capable of corroboration—where from the circumstances corroboration was possible, but it was fully sustained. No attempts were made to impeach him, and his testimony to this criminal act is perfectly conclusive. Corwin distinctly confessed it to him the next morning. Mark his language—he says, *we* have thrown them off. I regret that Sherman is not before us. So many witnesses have been upon the stand that you may not distinctly remember him. His extreme candor; his favorable personal appearance; every circumstance must have impressed you, however, very favorably. He swore that W. Corwin told him *we* have thrown off the Rocket.

Mr. William Clark's testimony, who was the engineer on the Rocket, was then read, and the testimony of Mr. Purcell, who swore that Corwin and another man came into Filley's tavern a few minutes before the engine run off, that he refused to go the spot with others when told of the disaster, and other singular conduct. His testimony shows that Corwin was there at the time that he and the young man had some privacy together. It shows that he did not wish to go with Holden to the cars. If you and I had been there and had learnt that an accident had happened to the cars, that men were there in distress, perhaps hurt, perhaps killed, humanity, or if not that, curiosity at the least, would have led us, as it did others, to the spot. These men had no such impulses. They chose to stay away. If they threw off the

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engine, it was but natural that they should wish to avoid the spot, lest they should meet at the hands of outraged men the speedy punishment due to their crime. Something might expose them. A natural timidity which every guilty man feels would cause them to shrink from visiting the scene. Their unnatural conduct furnishes evidence against them. I submit it as evidence. Corwin admitted it, and said he had thrown it off.

A wood pile was set on fire near Michigan Centre, and an attempt made to steal flour out of the cars, and Sherman is the witness upon the subject. Corwin and Eb. Price did it. Sherman was present, and they were arrested in the act by four men, and now stand indicted for it in Jackson Co.

Mr. Sherman's testimony was here read, implicating Corwin and Eb. Price.

That is Sherman's history of the burning of the wood pile. One principle I will state that you may safely rely upon. When a witness states a fact upon oath, that fact being within the knowledge of 4 or 5 reputable men—these men accessible to the other party—if uncontradicted, the fact must be true—for in the first place, the witness would never dare to state falsely, and again the defendants would never permit it to remain uncontradicted. You have the fullest assurance that it must be true, if not it would have been contradicted by the deft's.

Sherman swears that Corwin and Price burnt the wood pile, and were caught in the act, by 4 or 5 men including the officers, sent to arrest them, and it stands uncontradicted.

Again, the Goliah was run off in the fall of 1850. Mr. Sherman's evidence relative to that occurrence was read to the Jury, stating that Corwin admitted to him that he went up to Leoni and fixed the plan and came away trembling for fear it would not succeed, but next day learnt it did.

Now, Mr. Corwin must have the credit of telling the truth in this matter, for we have another witness who corroborates him. Mr. Bingham swears that Corwin and another man whom he took for Williams, passed him on their way to Leoni on the night the Goliath run off, and spoke to him in a disguised voice.

Mr. Bingham's testimony read.

Here it is—Mr. Corwin admits that he had made arrangements to run off the Goliath; that he went home fearing it had not succeeded; but heard the next morning that it was done up brown. In confirmation of Corwin's statement, you have the evidence of Mr. Bingham that he was overtaken by Corwin on his way to Leoni, just about in season to effect what he admits he did.

Upon another occasion an attempt was made to shoot the engineer.

Another time, pistols were given to three individuals to make a similar attempt.

Mr. Clark, the engineer, was so terrified that he quit the service of the Company, and went to another State. This was Fitch's boast to Wescott, and Clark testifies that it is true.

I shall examine the testimony of Mr. Wells upon the last mentioned attempt. (See Joshua Wells' testimony as to Fitch's delivering pistols.)

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Mr. Wells tells you the particulars of the delivering of the pistols, and that he and the others went as directed to shoot at the cars. He also relates a natural circumstance, tending strongly to confirm his story:—he tells you that they reached the cars too late to fire at them. He tells you what his own intentions were, and that in a conversation that occurred after the cars had passed, it was said if any spies were to happen along they would be prepared for them. But as to the next important point, the delivering of the pistols, we have the fullest proof even from the defendants' own witnesses.

Nathaniel Huntingdon's testimony was read, stating that Laycock admitted to him that he and Wells and Caswell received the pistols of Fitch to shoot at the cars; that they did not use them then, but they were fired another time.

Horace Caswell was one of the persons to whom the pistol was given, and he swears to it. (See his evidence.)

(Testimony of Henry Holden read.)

Mr. Holden swears to a conversation with Fitch, in which this admission was made, and although the admission was meant to be an apology, yet it is sufficient to sustain my proposition. It answers all our purposes. Mr. Fitch admitted to this witness, on being charged with delivering the pistols, that he had done so, but that they were only loaded with powder to frighten the engineers and passengers. I would ask any candid man what was Mr. Fitch's motive for frightening the people in the cars? It is broadly denied that he had any intention to injure the road. If he had no feeling against the road, then what earthly motive had he to give pistols for the purpose of firing into the cars? Even although loaded only with powder, would an honest man do so? No. Wells tells you they were loaded. Caswell tells you they were loaded. Laycock has admitted that they were loaded to shoot in the cars. We have proved by two other witnesses that they were loaded. Mr. Barney, Culver and his sister, swear to Laycock's admission to this effectr (See their testimony.)

Now, did Fitch do it? We have no evidence as to the previous shooting to identify those who did it; but we have the evidence of two or three that they heard the guns. We have evidence that Fitch said that Elder Limbacker did it; that one engineer left the road in consequence, and we have the evidence of Mark English, whose testimony I will read, who swears that Fitch told him in the fall of 1850 that "*we*" have a plan by which in less than one year the Co. will be unable to get a single engineer to run on the road for fear of their lives, and Barrett about the same time tells English the same. Had they such a plan? Were the cars fired at for this purpose? We have the testimony that two or three guns were fired at the cars. And we will look for a moment at the choracter of those persons whom Mr. Fitch employed in this innocent amusement.

In the first place, Mr. Wells was a mere boy; engaged on his farm, Fitch sustained almost the relation of a parent to that boy. Caswell is a thoughtless, reckless boy, and I brought him upon the stand to acquaint you with Fitch's associates. I know Caswell well, he was for months under my control as a soldier; and unsupported and alone I would not have brought him here. But if you had been

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investigating this matter for yourselves, knowing that Caswell was acquainted with the facts, you would have asked him what he did know. I produced Caswell here, but I tell you plainly he is a man of no earthly responsibility. He could be influenced and persuaded to anything, not because he is vicious, but because he has no settled character. What must be the disposition of a man who would place deadly weapons in the hands of a man like Caswell! Could he have any assurance that, even if the pistols were only loaded with powder, he would not add the deadly bullet. To these thoughtless boys he delivered the weapon, he seduced them to aid his wicked and criminal designs.

Cataline was accused by Cicero with having seduced the youth of Rome. Fitch has imitated the example of this arch-traitor. What must be the character of a man who would thus train up to vice and crime a boy that looked to him for example and direction. Did he mean no harm. Gentlemen, I do not excuse or justify the conduct of the witness, but standing as his testimony does supported by Lacock's and Fitch's confessions, you cannot disbelieve him.

I know that Fitch has brought the little girl to explain. Whether the little girl,innocent and harmless as she was, told the truth, or whether she, too, has become the victim of the base arts of this man, and trained to his purposes, has been dragged up here to soil her soul by a foul perjury, is a question.

If there ever lived a man who could look upon the innocent face of that child, and then seek to seduce and pervert her young heart from the paths of truth and rectitude—if there ever lived the human being that could influence that child to the commission of base perjury, he should crawl as a reptile instead of wearing the form of a man.

Whether this has been done or not you will be able to see before we conclude.

Again, in June, 1850, the cars were stoned by Williams, Champlin, and Filley. Mr. Taylor bears testimony to that fact. (See the testimony of Amos B. Taylor.)

Two wood piles were burnt in October, 1849, west of Michigan Centre.

I will read Mr. Huntingdon's testimony upon the subject. (See the testimony of Nathaniel Huntingdon and Wm. O. Stone.)

Now who burnt the wood pile? It might have been burnt by accident.

But while Huntingdon and Stone were at work putting it out,they heard persons creeping around whispering in the woods, and the fire was no sooner put out in one place than it took in another; and at length Mr. Fitch, Ami Filley and Erastus Champlin made their appearance and instead of commending or seconding their efforts to extinguish the fire, they abuse and censure them for their efforts, nay curse them and swear that they hope they may be burned themselves, tauntingly tell them that the company will then pay their wives half price for them.

Fitch on this occason tells Huntingdon that if he saw an obstruc-

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tion on the track and the cars were coming loaded with passengers he would not take it off if it "knocked them to hell." This language, this insult and abuse was employed by Fitch, Filley and Champlin, to Stone and Huntingdon to induce them to desist from their efforts to extinguish the fire. That they desired the destruction of this property of the R. R. Co. is manifest from the fact that they thus abused, discouraged and almost threatened the men who were striving to save it.—That they would see hundreds of innocent people dashed to atoms on that road sooner than so much as lift a finger to prevent it, we are fully assured from their own lips, under circumstances which fully guaranty their sincerity.

I ask you, gentlemen, if here in this interview are not developed motives of hate and hostility deep and strong enough to prompt the men who harbored them to the perpetration of worse crimes than arson—than burning a wood pile. Did these wood piles burn by accident? At all events will you look further for motives of hostility deep enough to prompt the commission of any crime which could injure the property or busines of this Railroad.

One night, in the fall of 1850, a passenge rtrain of cars were stoned as they passed Filley's tavern.

From the testimony of Hiram Dexter you learn the particulars. Dexter was standing at the door of his room and heard the stones strike the cars and the glass rattle, he looked and saw Filley swinging a bottle, and Fitch, Corwin the Prices and Williams standing there, Fitch standing in the front door.

One night, in the fall of 1850, the passenger train of cars was stoned between Leoni and Jackson. James A. Dyer was on the cars and one stone struck his hat. Woliver swears that just about that time and place he Filley and Corwin stoned the cars.

On the 8th day of July, 1850, the passenger train of cars was stoned at Leoni, by some of defendants. (See the testimony of Jacob Woliver.)

We have the testimony of divers other witnesses, showing that the cars were stoned one night out of Fitch's garden, on another out of Filley's, where piles of stones were kept ready for this purpose, and at other points, by some of these defendants.

Jacob Woliver tells you that he and Filley put an iron bar on the track, that they took it from Fitch's premises, and Wooliver and Wells swear that when Fitch was informed of it he told them they must not take things from his possession for this purpose because it would cause him to be suspected, but take them from anywhere else they pleased. Another witness, one of the hands on the road, I think, found the iron bar on the track and took it away, and Wescott and others saw it previously by Fitch's fence.

It will be observed that I have not in my argument thus far particularly designated the persons actually connected with each of these depredations. The object for which they are to be used in this case renders this unnecessary. The evidence already alluded to and that to which I shall hereafter refer will, I doubt not, sufficiently identify nearly all of these defendants with them either as their ac-

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tual authors or as aiding, planning, advising or justifying them, and as the object of this evidence is to show the malicious and hostile feeling of these defendants towards the Company, and their general plans of mischief and depredation—the particular degree or mode of that connection is immaterial.

I shall next ask your attention to a class of testimony which while it tends strongly to establish my present proposition, to wit: "that these defendants or some of them committed the depredations enumerated," has also a direct bearing on the two next propositions in the series, to wit, that they so committed them under and by an agreement, contract and understanding or conspiracy, and that that contract or conspiracy was in tenor and effect as I have alleged in my fourth proposition.

I say these defendants threatened and planned these depredations and for that purpose met and consulted and deliberated together. I shall call your attention to the meetings at Filley's, and I insist that these were not casual meetings—but indicate a fixed and settled understanding by them that they would act in concert, and I shall prove that at their meetings they threatened these crimes, that they referred at these meetings to the acts that had been committed, and that these acts were made the basis of future operations. I will furnish to you the most satisfactory evidence that they acted in concert in committing these crimes.

From an early period in 1849 to 1850, these meetings were frequently, almost constantly, from two to six times each week. We find them in large numbers in Filley's Tavern, not the same individuals or the same number always there, but at the succession of meetings all of these defendants at different times present.

Take the testimony of the Negro Brown, he was the friend of Filley's, he was to us an utter stranger. We asked him what he knew and he told his story, and I venture to affirm there is not a man of your number but would believe every word that fell from his lips, his candor together with his ignorance made his testimony perfectly reliable.

Mr. Brown's testimony was here read as to his knowledge of the conspiracy, and who met at Filley's, as follows:

Henry Brown—Went to live with Ammi Filley in April 1850; stayed two months, knows A. F. Fitch, Ammi Filley, O. D. Williams, E. and R. Price, Lyman, Willard, and Erastus Champlin, Jack Freeland, Ephraim Barrett, Dr. Moulton, Jacob Tyrell, Grandison Filley, Abner Grant, Lester Penfield, Walsh, Miner T. Laycock, and John Ackerson. Frequently saw these persons meet at Filley's—generally in the night—most of them often—Welsh, Moulton, Penfield and Ackerson not so often.

At these meetings heard Filley say he had no sympathy for the rail road company,—those who travelled on the rail road should be cautious—they had been warned not to travel on it. I have heard Freeland, Fitch and Filley say that they would let the company know that there was a God in Israel. Has heard them, and especially Filley say that the dry marsh would be a good place to run them off. They

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allowed it would be a good place to run cars off. They wanted the company to pay them for cattle. Said they had warned people not to travel on the rail road. They talked freely among themselves, but not before strangers, or any one not connected with them. Filley said that if any one betrayed them, they would move him so that he could not betray, spy or any thing else. Threats against spies were made by Filley, Fitch, Freeland &c. in the presence of others at different times, there were from five to nine at these meetings. They had one general subject of conversation.

Does not this evidence prove conclusively that these men were connected for purposes of mischief, against the Railroad Company? Why should they manifest and declare hostility against spies, if they harbored no design against the law? If they contemplated no wrong, why did they threaten to remove any man who should inform against them?

I will now read the testimony of Mr. Cochrane. It has been said that these meetings were public. That this was a public bar room. It was a place avoided by all honest men—it was a place never intended for public accommodation, but seems to have been fitted up for the convenience and accommodation of those desperadoes. Is it true that the meetings were open and public? Has not every witness that has been sworn, stated the contrary? Did not Dixon say that he could not even "*whittle up to them*;" that he never could induce them to talk to him. It is quite easy to tell when several persons are talking, whether they continue the subject or commence another, when you approach them. If they do not wish you to hear what they are speaking, you will observe an air of embarrassment upon your approach, they will commence upon some frivilous and unimportant subject.

Why they could not talk in their own bar room, in the presence of the poor, ignorant, negro Brown. Will this still be called public, every witness on the subject swears the contrary.

They might safely meet in that public bar room, for there was scarcely a man in the little hamlet who was not in the plot, well might they talk somewhat publicly in a locality where every man was ready to aid their design, with scarcely an exception, where a bucket could not be procured to extinguish a culvert on fire, although the safety of the approaching train, and the lives of hundreds depended on it: that bar room furnished the stimulous that urged them on in their infernal course; there was the fuel which fed the flame of revenge, that glowed like a furnace in their breasts; that fuel was furnished from the whiskey barrels of old Filley, and nothing was more essential than this stimulus.

No time was sacred, not even the holy Sabbath. Look at their moral character, playing cards, gambling, drinking and carousing Sabbath after Sabbath; seducing the young, the ignorant and the thoughtless from the path of rectitude, and enlisting them in wicked and lawless schemes. Listen to their horrid oaths—their blasphemies. Scarcely an expression from their lips but it is uttered with an oath. Take their whole conduct, and then judge, if the reasonings of mo-

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rality and the teachings of the scriptures are true, to what end and issue such practices and conduct naturally and necessarily tends; is not crime the natural and appropriate sequel of such a history?

See them at home, gambling — playing at nine pins — getting up shooting matches,—one of the oldest men of their number, visiting your city, spends his time at cotillon parties and other places of amusement,—idling away their time.

The counsel say that they went for the purpose of amusement, such amusements as demons would delight in, plotting murder, destruction, and conflagration.

They say they had a right to be there. Perhaps so. No place this side the infernal regions could be more appropriate for such a conclave. But they say they had a legal right to act in the manner they did. They and I differ. Their course of ordinary and daily conduct was but a shade below that of crime, and when viewed in the light of experience affords a strong probability of their guilt.

Mr. Wolliver's, and Mr. Sherman's testimony read as to the meetings at Filley's, as follows:

Jacob Wolliver.—Commenced work for Filley in May, 1850, and staid eight months, or near that; but had been there often during the preceding winter; most of the defendants were in the habit of meeting at Filley's; some of them nearly every evening, from nine to twelve in number. They sometimes came in companies of three or four together. Fitch was there generally every day or evening; they generally talked of the railroad company; that was the general subject; openly before themselves, but not very publicly before strangers. Their conversation was as to taking up the track and injuring the road. They had had their property injured, and if they could not get revenge in one way they would in another; that the people in the eastern states knew of the trouble on the railroad; they would never give up until perfectly satisfied for the damage done to inhabitants of that place. They would carry out their object, which was to injure the railroad all they could. They would stone the cars, throw them off the tracks, and have revenge in some shape. Has seen all the defendants he has named at these meeting, when such threats occurred, and have heard them all make such remarks. They seemed pretty well agreed as to these matters. Have heard Filley, the Prices, Corwin, Williams, and the most of these defendants say they would stick together—would assist each other—and could not be convicted—that they would swear for each other, &c. This was said in the presence of others, and they all agreed to swear for each other, would stand by and swear each other clear—that they were too strong to be convicted; also heard them say what they would do with spies—those who watched their movements; if they were certain they would knock them over—would put them out of the way: heard Filley, Corwin, and the Prices say so; it was generally talked amongst them in the presence of pretty much all I have mentioned. I don't know as Palmer, Warner, or Welch was present; believe it was said before Barnett; have heard Moulton often tell

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them to look out for spies—they were watched. Dixon and Westcott were suspected of being spies, in consequence of Gleason's information about the letter; Westcott was not there a great while before they suspected him; on the same day Gleason came down with some one with him, E. Price, Freeland, Barnett, N. Credit and myself were at Filley's; Gleason said Westcott was a spy, he had learned it from a letter at the prison. Fitch had told them before to look out for Westcott, he believed he was watching the people, and after Gleason came down, he said Westcott was a damned railroad spy, and that a railroad spy ought to be shot. Have heard all the others I have named say the same, except Warner, Welch, Farnham, Long, Stone, Hill, Lemn, Myers, Burnett, E. Champlin, L. Champlin and Hay. Those who were most at Filley's were Fitch, Filley, Corwin, Williams, the Prices, and Chamberlins.

Lemn said that it was too bad that people had property destroyed and he would aid them in suits for compensation. Heard Fitch say that if he had cattle destroyed he would tear up the track and get satisfaction in some way. This was said often before others. Gleason said he came to notify them that Wescott was a spy. I think Joshua Wells was there that Sunday.

They proposed to get Wescott down at the card table and kill him. The Prices, Corwin, Filley and O. D. Williams talked in Filley's bar room.

Cross examined—Heard Fitch say they should never run the rail road in peace—they were determined to carry out their depredations till they brought the company to terms. This was the general talk. Did not always see the same individuals every evening.—Heard L. Champlin say the company should have no peace on the railroad until they gave satisfaction. There was very little travel and strangers seldom came there. Sometimes a stranger stayed all night. In making their threats, the defendants often spoke of depredations that had been committed on the road. I have heard all the persons I have mentioned thereaten spies. Fitch suspected Westcott and said his father-in-law was poor and he wouldn't stay there unless he had an object. Heard Gleason speak of rail road more than once at Filley's. Heard him say they would stand by each other as witnesses. Filley, Fitch and others were present.

Hiram Sherman—Known O. D. Williams, Burwell, Fitch, Barnwell, Barbour, the two Filleys, Corwin, Moulton, Tyrrell, Grant, Penfield, Lacock, R. and E. Price, D. Farnham, N. B. Lemn, Myers, Freeland, Beebe, Welch, Stone, Gleason. Lived one mile south of Michigan Centre, in 1850. Had lived in the town of Leoni about four years. In 1850, lived on Delos Holden's farm, and was a farmer. Became acquainted with John B. Cochran about the middle of August, 1850, and during the State Fair watched the railroad with Cochran. On the 4th of October, was employed to see what I could discover as to the persons committing depredations on the railroad. Saw Woliver, Corwin, Ammi Filley and Fitch at the Center nearly every day. Woliver stayed but a few days after I went there, and then moved to near Albion. Westcott and Dixon were there. I saw

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a number of meetings at Filley's ball-alley and bar-room. O. D. Williams, Erastus Lyman, and Willard, Champlin, Lemn, Corwin, E. and R. Price, Stone, Grant, Barnett, Hay, Penfield, Freeland, Beebe and Welch were there. During the second or third week saw meetings six or seven times. Sometimes all these persons—sometimes a part of them—one evening some of them, and another evening others—one evening there were as many as 20 there. On this evening some of them talked privately—they did not talk freely before me. Once Cochran came with me and I saw their eyes all turned on us and they avoided us. Fitch, and Corwin at this time talked privately together. At one time I talked of leaving Holden's and Corwin said to me, "I suppose you can make more lying out nights." Once two men came whom they did seem to know and they avoided them. Corwin and E. Champlin asked me if I knew them. I said no. Corwin said they were damned railroad spies.

At the meetings they seemed familiar and address each other by the given name—Ammi, Dick, Bill, &c. Fitch they called Captain; was at the ball-alley the last of October, and witnessed the fight between Corwin and Palmer, and helped Corwin. I then called Corwin out under the shed and told him I was watching railroad, but was friendly to him and the rest and would not reveal, and asked Corwin to keep it secret. Corwin agreed to except to Fitch and he (F.) would treat him the first time he saw him. The next day Corwin called him into Filley's and treated, and told him that Fitch said that if he (F.) had known Sherman was on their side at the time, he would have pushed Westcott in and they might have hammered him to death.

I ask you if Sherman invented this tale, did he invent these expressions of Corwin, or did Mr. Corwin himself make use of them, was it not natural, probable, that two of these def'ts should fight over their games. Corwin was figting, Sherman took his part; Sherman at that time was endeavoring to ascertain their designs. He told them he was watching the road, but that he had no designs against them—he would take the money of the company, but would protect, keep their secrets. Corwin, conciliated by Sherman's interference in his behalf, gave his confidence. The reason of this sudden confidence is manifest—he could safely trust him. They were a multitude, strong in their own numbers, they had been tried and having baffled the efforts of the law, they boasted that they could never be convicted, and they had good reason to think so.

There was good reason for the belief that the prevalent public sentiment against the Railroad in that county would prove a protection. Secondly they had a host who would swear down any man; of what avail would Sherman's testimony be to convict Corwin of a crime.

How easy it would be to bring in twenty of their ready witnesses to prove that he was at that time at some other place, perhaps at Wolf Lake or the Tamarack in Mr. Hawley's neighborhood. How soon would numbers rush forward and swear down the man who testified against them.

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When Lester was charged with crime they came in and baffled all attempts to convict him. They boasted of it to Sherman, Phelps and others, to show how little danger was to be apprehended; they thought that but two, three, or four would be charged at once, and that there would be enough left to swear them clear.

They openly and repeatedly boasted that they could swear any man clear, could swear any man to State prison, and impeach the best man in Jackson County. They reposed the utmost confidence in the influence, talent and sagacity of Mr. Fitch, they believed he could at any time baffle any effort at detection.

Hence the extraordinary facility with which individuals gained their confidence, and when Westcott turned traitor to them it did not much alarm them, they could swear him down.

When Price and Corwin were put in jail for burning the wood pile, they had been caught in the fact by four men, the Grand Jury, even of Jackson county returned after much higgling a bill. They wore nowise daunted, they said they could put it off. Subsequently they got out upon frivilous bail and got away.

I ask you if this is not the true reason for their apparent sudden confidence in Sherman, they had no doubt of their security, they were too strong to be convicted, no Jury could be found in that county to convict them.

It never occurred to their imagination that they could be brought out of the county of Jackson. It is with a feeling of deep humiliation that I am compelled to state my belief that they had every ground for this confidence; I firmly believe that with the aid and influence of Fitch, with the sympathy of their friends, with the prejudices which could be enlisted in their favor to defeat the ends of justice, these men could never have been convicted in the county of Jackson, strong and plain as the evidence of these numerous aggressions is. Hence the facility with which Mr. Sherman gained their confidence.

Indeed they really manifest little confidence after all. They said to Sherman you may betray us if you dare, but if you do you will never live to take the stand against us, if any of us shall be arrested —we are a host, you may betray us if you dare. They dared to tell him this and their confidence was extremely well founded. One fact related by Sherman requires a remark. Corwin tells him Fitch would have pushed Wescott in the ball alley, and he would have been hammered to death if he, Fitch had known Sherman was on their side. Fitch had discovered that Westcott was a spy, and said that if he had known that Sherman had been on their side then murder would have been committed.

We have three or four witnesses to prove that they plotted to take the life of Westcott, Sherman, Wells, Wooliver, Wescott, and Dixon, testify something in relation to it, and do not their threats against spies, proved by multitudes of respectable witnesses, coming from every part of Jackson county, do not the threats of Fitch that he kept double barrelled guns and would give them cold lead, made at Morrison's grocery, tend strongly to confirm this evidence? Were all these malignant threats empty and vain? Have they not given

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us convincing proof that they were sincere and earnest? Is not Holmes, as he stands before you with his palsied side, his broken jaw, his members perished, dead, and withering from the brutal and murderous assault of this infamous Williams, a living and melancholy witness of the dire sincerity of their threats against those who would expose or betray them—his only offence was that he was suspected of being a railroad spy, and for this he nearly lost his life.

The circumstances of that assault, upon poor old Holmes, indicate at once the cowardly brutality of the ruffains by whom it was committed, and the reality of the murderous designs constantly avowed by him and his assoicates. This old man, harmless and inoffensive as he is, had been suspected and charged of being a Railroad spy. Williams found him in Filley's bar-room, where he with others were assembled as usual; sick and feeble, suffering from a protracted disease, the old man had left his bed that day, for the first time for weeks, and weary of the forced solitude of his sick room, had with difficulty dragged his exhausted frame thither in search of society and sympathy. Williams finds him seated there upon a bench, and commences a fierce and brutal assault upon him, after having accused him of being a Railroad spy, he ruthlessly drags him from his seat and throws him violently and repeatedly on the floor. In vain the old man informs him of his debility and helplessness; in vain he looks to the the by-standers, his neighbors, for protection—he is suspected of being a Railroad spy, and this suspicion precludes all sympathy. His age and his helplessness are forgotten, not a hand is raised in his protection, not a word of remonstrance is heard—Holmes is abandoned to the tender mercies of his cruel and cowardly assailant. This heartless and dastardly wretch who, after several minor injuries, designed to provoke a quarrel and give him some pretext for executing the murderous purpose of his heart, at length hurls a bottle ngainst the head of this feeble old man and lays him senseless and bleeding at his feet. The effect of this brutal assault you have both seen and heard. The wretched victim of it, crippled in every member, palsied, withered, and stupified, still trembling for apprehension of his life, shrinking from the demoniac gaze of the murderous ruffain, even in your presence, has stood before you. The design and purpose of that attack you may learn from the very lips of its ruffain author. While that old man was still confined to his bed with his broken jaw still unhealed, while his very life was still in danger—this same Williams boasted to Morrison, in his grocery, at Jackson, of this heroic exploit, and mark his language: "I have laid out one d——d Railroad spy, (alluding to Holmes) I meant to have killed him and wish to God I had. I will kill a Railroad spy as quick as a massassagua." Does not the conduct of this man entitle him to full credit at your hands? Does this bloody threat speak the purpose of his heart? Can you doubt that these men would murder? What were their daily acts of aggresion upon the Railroad but attempts to murder the harmless and innocent, and think you they would hessitate to destroy the man who had be-

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trayed and would expose them? From Holmes they had little to fear, from Westcott everything. If Holmes, to save his very life, has been compelled in a measure to assent to their schemes in order to allay their suspicions—I ask you was Wescott safe?

Would the fear of the law restrain them? What protection or redress did the law of that county afford to Holmes? Has the criminal law asserted its claim? Has the merited punishment prescribed and denounced against this fellonious assaulter, been inflicted? Have the patriotic guardians of the law in that county interfered to vindicate its claims and repress such public outrage? Has satisfaction and redress been awarded to the party injured for his life-long suffering and disability.

When this same Williams, in a quarrel provoked by himself, recieved at the hands, or rather the fists of Mr. Dobbs, what, you will believe, he well merited, a slight chastisement, involving neither disability nor permanent injury, the law and its officers, in Leoni, were prompt to administer punishment, and afford redress to their discomfited champion.

Esq. Luce's court was forthwith convened, and the prisoner arraigned. Poor Dobbs, terrified by the threatening mein of this honest and uncompromising minister of outraged justice, craves a jury. A list of dis interested men, good and true, is promptly furnished; of their eminent qualifications and unquestioned integrity, the name of Bill Corwin at the head of the list furnishes conclusive evidence. But even among the best of men, there might be a choice, and Dobbs ventured to exercise his right by shaking off some of the names. This audacity was promptly resented and the jurors thus stricken from this honorable roll, duly restored as talesmen. By their verdict the wisdom of the selection is fully justified; Dobbs was found guilty, and the clemency of the court awarded a fine of twenty dollars, besides civil damages, and the judgment was promptly executed.

Over Holmes' wrongs the law and its worthy ministers in Leoni have slumbered a year. He was a Railroad spy.

But what does Fitch mean when he tells Corwin, as testified by Sherman, that if he had known Sherman was "*on our side,*" he would have pushed Westcott in, &c. What does he mean by our side, and what does old Champlin mean when he tells Sherman he is safe as long as he remains on the "right side," but if he "turns against the boys," they will kill him.

But let me read the testimony of other witnesses as to the proceedings of these meetings at Filley's:

Joshua W. Wells.—Went to work for A. F. Fitch on the first of December, 1847; staid twenty-two months; left them in October, 1849. When I left him I went home, half or three-quarters of a mile south of the Centre; staid two or three weeks, and then went to Pennfield's and staid until January 7, 1850; then went home again and staid until the 12th of November, when I came to Detroit. During the last time I was at home, from January to November, 1850, I worked some for Filley, and for Holmes two or three months on and off; I tended bar for Filley; was there often eve-

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nings, as much as two-thirds of the time; saw many of the defendants there sometimes; sometimes most of those I have named. (See printed testimony.) Have at times seen two, three, and four of the defendants go into Fitch's. They were sometimes around day-times, but mostly nights. Have frequently seen twenty of them together. Sometimes, after the main company had dispersed, five or six would remain and talk of railroad matters.

Those I saw the most during this season, were Fitch, Ammi Filley, Corwin, Jack Freeland, the Prices, the Champlins, and Barrett. These were the most frequently together and talked mainly of railroad matters; cannot identify particular times, because they were so frequent. Heard Fitch say at one of the meetings, that he had written some letters to his friends not to come over the railroad, and stated that the reason was that daily obstructions were placed upon the track that would endanger life. He said he wanted to keep travel off the road because they would not pay full price for cattle. He had friends in Buffalo, Chicago, and other places, and spoke of going there to advise people to go round the lakes, and not over the railroad. This was in Filley's tavern, some half-dozen present; O. D. Williams, Gleason, and Filley present and took part in the conversation.

I heard Fitch say that they would never convict any one, they could not get a jury that would find any one of them guilty, that he had two many friends. In the same conversation Filley said they would prove they were somewhere else—at Bear Creek, at the time things happened. I heard this in substance repeated several times. Fitch said they could get what witnesses they wanted. Have heard this mentioned among them all frequently there at Filley's. Heard Fitch say he had friends everywhere. Often heard it said that the railroad company could do nothing, that Fitch had too many friends and would stick by them as long as there was blood in his body. Have heard E. J. Price and Ammi Filley say this.

One Sunday heard Fitch say they might bother them by putting iron on the track, so as to run the cars off one side. Heard Fitch, Ammi Filley, and E. J. Price once speak of putting a rail through the ties so as to break the lamps. This was in Filley's bar-room; can't be positive, but think others were present. I have often heard Fitch say that such a thing had happened near Leoni. It was spoken of by Fitch that they might get the chains loose, break them, and pry the rails one side so as to let the cars off. There was quite a number present, and all had something to say. Corwin, Ammi Filley, Gleason, E. J. Price, and others present. There was a general talk among them on that subject. It was first spoken of by Fitch. I can't tell what each one said. After the track was so moved, east of the Centre, and I think the next day after it happened, some of the defendants told me that it happened in the way spoken of in the above mentioned conversation. Fitch was present when this was told me; O. D. Williams, E. J. Price, and others were present when I was told. One said if the cars had run off, they would not have got out very easy, that they would have gone

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into the mud thirty feet. What I was told was that they had tried, but failed in running them off the track; the cars had pulled up.

Cross examined—O. D. Williams, Jacob Freeland, E. Champlin and Burnett were at Filley's and Gleason frequently on Sundays. Sometimes half a dozen of the defendants went into the kitchen and stayed an hour or two. Have known Corwin, E. Price, Barnett, Filley and R. Price go into the kitchen together, in 1850. I have heard Corwin say to the rest of the defendants, we must meet, boys, at such a time. In the conversation at Filley's about throwing off the cars, Fitch suggested the plan. Don't recollect exactly how the conversation commenced. Fitch was talking to Champlin, Barnett, Corwin and O. D. Williams. Think they spoke of a car having been run off. Can't give Fitch's language. He told how easy it was to run them off and told them how Filley and Laycock replied. One car had been run off before and others after. Laycock and Filley said it was a first rate operation and they might thrown them off very easily. There was a train thrown off before this conversation. I don't know whether it was the Rockett. I heard Fitch speaking in Filley's bar-room about a fortnight after Wescott came there, say he had sent to Detroit to warn people from coming over the road—Westcott, Barnett, and Filley were present and spoke of it generally. They generally talked freely among themselves, but if a stranger came up, suspended or changed the conversation. This occurred several times, but I can't specify the times. Some of the defendants often met them when there was no one else present.

Heard Fitch say at Filley's to Wescott that he would shoot a spy. The conversation commenced about the railroad employing spies. Fitch also spoke of getting witnesses to prove anything he wished, and said that they could not convict him. Heard Bill Corwin speak of shooting spies in presence of from six to ten of the defendants. Also others at different times. When the defendants met at Filley's and drank they did not pay and I was directed not to charge.

Harrey M. Dixon—Spent about six weeks in Michigan Centre in the Fall of 1850. Went there about the 20th of August, and finally left about the 12th of October. Boarded at J. D. Falls; know Lemn, Filley, Fitch, Barrett, the three Champlins, Freeland, Farnham, Moulton and Laycock. I saw a good many of these generally at Filley's tavern, some of them nearly all the time, some of them only once or twice—all of them there. Those I saw most often were the two Prices, Williams, Corwin, old Champlin, Willard Champlin; they were there mostly in the evenings; met at Filley's. They assembled from two to four times a week—frequently saw them talking together and tried to come up and join them, but when I did they would break up or change the conversation. Fitch was almost always there when they met. Saw Gleason at Fitch's—was introduced to him by Fitch, one evening when Fitch, Filley, Wescott and myself were playing cards; Gleason and Barbour came in and called Fitch into another room. Think this was in the fore part of September

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James M. Hewitt—Have worked on rail road and run cars, passenger and freight, through Leoni and Michigan Centre, during the year 1849 and 1850, nearly every day; usually passed in the day time—sometimes in the night. Have seen unusual assemblages of people at the Centre—as many as a dozen often. They usually assembled just in the edge of the evening. Fitch and Filley were among them. Don't know any of the rest of the defendants except Warner. There were a number of persons along the track

Heman L. Spaulding—Know most of the defendants. My business called me much at the Centre, and have seen most of the defendants assembled there. Those I have seen most frequently are the Price boys, the three Champlins, Corwin, Lemn, Barrett, Fitch and Filley. At different times have seen them all there. I don't know that I have seen them all together. There used to be from six to ten at a time. Some of them were together almost every time I was there. One Sunday I was there, I saw Fitch, Filley, Barrett and I think the Price boys, and quite a number of others. They were on the rail road near Fitch's house. A conversation came up about the rail road. I don't know that I ever passed through the Centre without seeing some of these assembled there. I don't know what their business was, or if they had any. They knew I was in the employ of the rail road, and talked very little with me. I was there for at least eighteen months as much as two or three times a week.

Hiram C. Dexter.—Lived in Michigan Centre the summer of 1850, worked at making a ball alley for Filley between two and three months. Know Fitch, Filley, Corwin, the Prices and *O. D. Williams*; board at Filley's.

The men I have named were often at Filley's nights—can't say how many nights in a week—should think three or four nights in a week—some of them stayed late after I went to bed.

Charles Roger.—Lived at Michigan Centre four years previous to December 1849; cooper and worked for Shoemaker. Knows nearly all of the defendants. Heard Ammi Filley talk of a plan by which the cars could be thrown off, notwithstanding they run a hand car ahead of passenger train by putting a timber in the culvert with a rope attached to it, and a person lying concealed could draw it up after hand car had passed. Fitch also spoke of a plan to throw them off in the presence of others, a little west of his house. Joshua Wells present; he also said a keg of powder could be placed under the track with a train leading up on to the rail and some caps placed so as to explode and wanted it done.

Have heard him give as a reason for obstructing cars, that they killed cattle, &c., and would not pay for them. Heard him speak of this several times. I also heard him speak of a grand invention for throwing off the cars—it was some kind of a machine which they could put on the track and throw off the cars, and in the confusion pick it up and keep it to use again. This was said in conversation with other defendants, when talking of throwing off cars. Fitch said he would turn out with his team and help tear up the track so. Cross

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examined—when conversation occurred about the mode of throwing off cars; it commenced about *accidents* that had happened. I heard Fitch speak of another plan of throwing off cars. Heard many of defendants at different times say it was a good plan to throw the cars off—breaking the chains &c., this Mr. Fitch called a bull switch.

Mr. Rogers at least is no spy, has no connexion with the Railroad, and I should insist if there was not another particle of evidence except Rogers alone, these men committed the depredations and that Fitch was at their head.

But if this is true, do not the words of Fitch imply a degree of criminal confidence between them? But it will be necessary to consider his locality. I do not know a single man in that little hamlet, with the exception of Mr. Shoemaker and Mr. Rogers who was not of one mind on this subject.

Fitch had no fears of Rogers—he had brow beaten or driven out every man opposed to his designs. He apprehended no danger, he knew from his character that he had nothing to fear from Rogers. He was a man who—opposed to Fitch and his gang—would be of no earthly account—he had no courage to take up the warfare against Fitch and his satellites. This conversation merely indicates the degree of confidence he felt in respect to his own security.

I have read the testimony as to the meeting at Filley's. I will not at present allude to the testimony of Wescott respecting these meetings. He attended them and gives the same statement as the others. Indeed, there is a remarkable coincidence in the testimony of all of these witnesses. Dixon could find out nothing, for they suspected him. Sherman was suspected but subsequently gained their confidence. Brown was of no aecount. Wells was with them in some measure, yet each develope exactly the same history. Brown tells you the same as Metcalf. But it has been asserted that these men got together merely to drink. Have the counsel been able to draw out any other subject of conversation amongst them except about the Railroad. Would men, assembled for mere drinking and sociability, talk thus for many months only upon a single topic? Brown says that there was one subject of discussion and one only—that was the depredations to be committed upon the road.

Does not the testimony of Rogers fasten upon Fitch a knowledge of a plan to blow up the Railroad. Freeland was the man who first started the scheme. Brown heard him speak to Wells on the subject. Caswell and Wells tell you that Fitch talked about it first—do you not believe? Woliver, Rogers, Wells, and Casswell all swear to the same fact.

From the testimony I have read to you, you will find that these men were almost daily in the habit of meeting together, their purpose was fully expressed—that was to ruin the Railroad Co., they were entirely consistent—injury to the road. Whether by one plan or another the purpose was the same—injury to the road, and this was as well effected by leading the public to suppose there was danger as by actually committing depredations upon the road. At these meetings these plans were concocted, deviced. The success of any

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depredation was reported, and that was made the basis of other attempts.

The evidence which I have rehearsed of the meetings of these defendants at Filley's, their conversations and manners at these meetings it is insisted, have a strong tendency to connect these def'ts with the commission of the depredations complained of, as well as to prove that they acted in concert and with a mutual understanding in committing them. Their meetings, their consultations, their jealousy of strangers, their reserve before doubtful friends, their hatred and threats of spies, their promises of mutual protection, their denunciation of vengeance, their constant reference to a hostility towards the Railroad, all conspire to evince a secret and hostile purpoee against it, and their threats, plans and acts leave little doubt as to what that purpose was, and the extent to which they were prepared to pursue it.

FRIDAY MORNING.

Mr. Van Arman resumed his argument.

Gentlemen of the Jury:—I again reluctantly trespass upon your patience. For myself, however, I enter upon this subject this morning, not only with alacrity, but with pleasure. I enter upon it as a solemn duty which has been imposed upon me, though I am aware that to you this trial must have become tedious, distasteful, and wearisome and fatigueing. But we must remember that peace has its duties as well as war. There are demanded of the good citizen sacrifices, time, labor, effort in peace as well as in times of war and outward danger. This, gentlemen, is an occasion when you are called upon to make such sacrifices, but I doubt not that you, one and all, will discharge your duties cheerfully, firmly and fully.

At the close of the argument, yesterday, I thought that I had gone through with the direct testimony in relation to the crimes which have been committed along the line of the Central Railroad. But on looking over the record I find other testimony bearing strongly upon the main points in this case, which have been overlooked. The amount of direct proof, of the evidence of those who saw the commission of these crimes—of eye witnesses, would, under ordinary circumstances, be small—for these things were done in secret. To avoid detection, they were of necessity done in secret—secresy was as necessary to their effect, as to the safety of those who committed them. Such testimony could only be secured by drawing off some of those in the confidence of the conspirators. What success has attended the efforts of the prosecution in doing this, the testimony of Wescott, Woliver, Wells, Caswell, and others, has shown.

I will commence with the admission of William Corwin, made to Patrick Morrison. I shall have occasion to refer to it again. I introduce it here as a direct admission, going to bring home the charge of criminality to these defendants. (See testimony of Morrison.)

Gentlemen—I wish to allude to the position of Patrick Morrison.—How did we get hold of his testimony? It is evident that the conspirators considered him a safe depository of their dangerous secrets. The institution under his control, was one of their favorite resorts. Here

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they congregated, and over their whiskey freely canvassed their measures of destruction. They had patronised him, and undoubtedly supposed that he was under sufficient obligations to them to make him a safe depository of their secrets. At any rate, they trusted him—they spoke freely of their plans in his presence. I will not speak of the character of Morrison—but the old saying might be verified in his case, that "when rogues fall out honest men get their dues." They probably thought that from his occupation, they might say before him what they pleased, and it would remain a secret. But no attempt had been made to impeach the testimony of Morrison. On the other hand, it has been strongly sustained by corroborating testimony. It was at his grocery that Filley made his fiendish boast after the burning of the Depot in this city. He was their friend—their confident. This testimony comes from the camp of the enemy. He was no friend of ours—he had no sympathy with us. But there is his evidence, with the stamp of truth upon its face, and with that of several others to sustain it. You cannot, gentlemen, avoid the conviction of its entire truthfulness. The testimony of another I will introduce, gentlemen, testimony which I regard as having a pointed bearing upon the guilt of some of these defendents. This is the testimony of Henry—Abram Henry.

(See Henry's testimony.)

Now, gentlemen, how did Corwin know that these guns were fired at the train? What reason had he for thinking that any one would be wicked enough to fire at the cars filled with passengers? What other citizen, think you, knew at what those six shots were fired?—How did he know that no one was killed? He appeared to know all about this transaction. We can only judge of men by their actions. From his threats, we may judge whether he fired the shots or not.—For all the purposes of this case, the coincident circumstances go to show the malignity of his passions, and that murder was in his heart. Does it not distinctly show that he approved of the act and harbored all the malignant passions necessary to commit it?

I will now read further testimony upon this point. In all matters concerning human life or conduct, a man's motives are to be judged of by his actions. Whenever a man makes a threat, it is an implication of law, that should an event occur, or a crime be committed in correspondence with that threat, he is to be held guilty of its commission.—Men may in the heat of passion, or in a moment of intense excitement, utter threats which are not to be regarded. But not so with those made deliberately and after cool reflection. But if he repeatedly threaten on numerous occasions and to numerous individuals, when we find such threats occurring cotemporaneously with their consummation, there is no avoiding a conviction of their connection. Passion does not last eighteen months. It ebbs and flows like the tide of the sea. But here plans are formed coolly and deliberately. We find many of these defendants at various times and in various places proclaiming quite publicly their plans, and when we see them afterwards carried out so near to the letter, we must conclude, that it rests in their hearts to commit the long catalogue of crime with which they are charged. But if, in addition, we show that they were provided

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with the tools to commit them, I insist that the proof is ample to show that they did commit the acts charged against them.

What does the witness Brown say? He is a colored man, to be sure—one of a degraded and despised race—but Filley approached him and wished to employ him to *work* on the railroad. I will read the testimony. (See Brown.)

One thing marks their course. There was no hyperbole—no idle threats—no idle words.—Acts followed words in quick succession.—Brown tells you he found two bars—just such as are used in tearing up railroad tracks—under Filley's barn. One was a crow bar for drawing spikes. The other a heel bar, such as is used for pulling up the track. How came they here? What use had Filley for them? Why should he hide them? How came they down at the marsh afterwards, where Brown found them? Was it for any legitimate purpose, and 11 o'clock at night too? Why did he approach this poor negro at this time, and under such circumstances, and ask him to work on the railroad? I ask, again, why these tools under Filley's barn?—why in the grass at the marsh where Brown found them, if not for the proposed work of destruction?

Another witness tells you that Fitch said he must have tools. Woliver and Sherman swear to this. And Price made them. Now, gentlemen, did Filley place these tools under the barn, and in the grass where Brown found them—did Price make them and did Fitch say he wanted them made for any legitimate and lawful purpose? Every circumstance—every action of these men, forbid such on idea. No. They wanted them in pursuance of their general plan of operations against the railroad. They were deposited under the barn and upon the marsh, to be so used, and for no other purpose. You cannot avoid this conclusion—it is inevitable. But Brown told them that he would not engage in this work. No, poor as he was—degraded as he was—he would not aid such wickedness. What said Filley on his refusing? "Then keep it to yourself, say nothing about it." Is there any doubt about the truth of this testimony? Could the poor negro, simple and unlearned as he is, have invented this story? He had no help. He did not have Mr. Billings, as some others have done! Jack Adams was not there! He came into this city on his own business. He was accidentally met by Mr. Clark, to whom he told his story. He came into court, and upon the stand has related what occurred between himself and Filley. This is the way, gentlemen, in which this witness was introduced to you.

There is other testimony which I will now consider in connection with the threats against railroad spies. We have it from twenty witnesses at least. They watched against spies. They guarded against spies. They threatened to knock them over, to kill them, and they almost succeeded in the case of poor old Mr. Holmes. Their suspicions were constantly excited, and they were ever on the alert lest some one should betray them. Is it so with honest men, gentlemen, with those who are guiltless of wrong? Who else ever thought of spies, but these men? And how did the counsel for the defence attempt to account for this extreme caution and circumspection on the part of these men? By asserting that these spies were petty larceny

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thieves, who were prowling about the grounds and dwellings of the defendants, and that it was necessary to guard against their depredations. From the mouths of the counsel in court have these calumnies for the first time come. The conspirators had not the mendacity to utter this charge, and it stands upon the mere assertion of counsel.

Gentlemen, is it doubted that the defendants were ready to commit any crime, however dark—ready to murder any man who stood in their way, or whom they suspected of betraying their fatal secrets?—Take the testimony of Woliver. After involving him deeply in their criminality—after having drawn their meshes around him so strongly that escape seemed almost impossible, they attempted to work upon his cupidity or his fears. He had fallen out with Filley, about the amount of whiskey he had drank. They suspected him of an intention to betray them. Fitch called him into his house, and said to him that some misunderstanding had arisen between him and Filley. Fitch was very anxious that Woliver should go away satisfied, as he was about to leave Michigan Centre for Albion. The reason of Fitch's anxiety, gentlemen, is obvious. He told Woliver that there was his barn, to go and take what wheat he liked. But Woliver was indignant. He replied that Fitch did not owe him any thing—he did not want his property. Unsuccessful in his attempt to bribe, Fitch next resorted to threats. He told him he would be killed if he revealed any thing; that if he turned traitor, he would never live to testify before a petit jury. What does Dixon say? That so fearful was Fitch that Woliver would reveal something, that whenever any person commenced talking with him, he would drag him forcibly away. This was done several times during a single day. Could it have been ordinary business that made Fitch and Woliver—so dissimilar in their characters, in every respect—so intimate? Was Woliver a fit associate to be taken to the fireside and the table of Fitch? No. What but a bond of crime could unite them? There was, gentlemen, no other tie between them. What was he there for? What was the business that brought them into such intimate relations? What was he after? I repeat it, gentlemen, there was nothing but a bond of crime between them. And an eye witness tells us that they dragged him off several times, to get him out of the way, when any one else would speak with him. Why all this fear?

They thought that Woliver would reveal their secrets. They knew that a little misunderstanding had occurred between him and Filley, and hence they were suspicious of him. They first attempted to bribe him into silence, and failing in this, they resorted to threats.

What does Corwin tell Sherman after Woliver had gone to Albion? That Filley had gone up to Albion to *caution* Corwin against saying any thing about the operations at the Centre. He went up singularly equipped for a man going on an errand of peace. He carried with him a double barrelled gun and a large knife. He carried these on a pretence of hunting. The counsel have said that Woliver had sent for him, but as they had quarrelled, and were on bad terms, is this probable? Why should he go there hunting? But did they prove that Woliver had sent for him? What did Woliver say? When questioned on this point, he said he sent no such word to Filley. His er-

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rand to Albion, therefore, is unexplained, except by the testimony of Woliver. Corwin said that he should go to caution him. Fitch hunted Woliver one day to prevent his communicating with any one else. And Mr. Spaulding tells you he saw Filley on his way armed and equipped precisely as he made his appearance at Albion. Why all this anxiety about Woliver? Is it consistent with innocence? No, gentlemen, it was the prompting of guilt. It shows that there was a fatal secret in the bosom of Woliver which they were fearful he would reveal. He had been their confidant. He had participated with them in their unlawful acts; but he had become estranged by his quarrel with Filley. He was regarded with suspicion and apprehension: they sought with threats to keep him silent.

Gentlemen—I shall now proceed to make you acquainted with some other threats, and plans which these men adopted in pursuance of their plan of operations. First, I will read you the letter of Fitch, to Mr. Brooks, in October, 1849. (See letter.)

Mr. Fitch wrote that letter. Its authenticity has been established by competent testimony. What effect it may have upon your minds I know not. But that letter shows that Mr. Fitch harbored hatred and bitter hostility to the Central Railroad Company at that time.

Gentlemen—What else does it mean? What is the plain English—the common sense of that letter? Does it come from a friend endeavoring to promote the interests of the railroad? A simple request would have been sufficient to accomplish the purpose ostensibly designed. There was no necessity for a threat. Did it not come from one bitterly hostile to the road, and did not that hostility alone dictate this letter? At this early period it shows that there was a spirit of determined hostility to the railroad and its interests influencing these men. But, gentlemen, comment upon this letter is unnecessary.—There it is before you. Its intent and meaning cannot be mistaken. It may not convey the idea that Fitch would lay his hand to the work; but it shows plainly that the work would be done, that the threats would be executed to the letter. And I defy counsel—I defy any other man to put upon it any other construction. We have, then, at this early period, a deadly threat and deadly animosity in the heart of the leader of this conspirrcy.

Again: Mr. McMichael tells you that when Corwin approached him and wanted him to go and assist in tearing up the railroad track, that he also wanted him to burn up the railroad property. Why did the defendants desire all this desolation? Why did Corwin desire McMichael to tear up the track? Why did Fitch threaten, and offer to turn out with his team to work upon the railroad? Did not Price make the bars which were found under Filley's barn and in the grass upon the dry marsh by the negro Brown? Did not Corwin talk with McMichael in Morrison's grocery? What was all this about? If he talked of railroad matters, it would be undoubtedly about these depredations. Thus McMichael's testimony is fortified and sustained by Morrison and an abundant train of circumstances, and there can be no doubt of its truth. And he says that he wished him to tear up the track and burn up the buildings, and do the railroad company all the injury they could. I shall allude to the burning again in its proper

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place. What do these things show? What is their purport? Most certainly, that there was a concert of action among these desperadoes in their hostility to the railroad. The catastrophes which they threatened and predicted, it will be seen all along, followed hard upon the utterance of the threats and predictions.

Gentlemen—I have heretofore alluded to the attempt to blow up the cars, and I shall refer to it again. Do you doubt the evidence of the witness Brown? Had he seen any of those men—had he seen Caswell or Wescott or any other, who would be likely to help him cook up the straightforward story he has told us? The first relation of it was to you upon this stand. He tells you that Jack Freeland proposed to bolw up the railroad track. This was the first that we heard of it. Jack Freeland was plowing on Filley's farm. Brown and Wells were sowing clover seed in an adjoining field, when Jack came up to them, and speaking to Wells, made the proposition. He said it could be done by concealing powder under the rails so that it would explode when the cars ran over it; he said it was a plan talked of, and would be done at the dry marsh; he said he knew it, would work, and when the cars passed there it would blow them off the track. Did Brown invent this story? Could he have invented it? Is there any doubt of its truth, or that Jack Freeland made the fiendlike proposal here ascribed to him? Not the least. The testimony is strongly confirmed by every circumstance connected with it.

In regard to the testimony of Wescott, one of the spies. Woliver tells you of the attempt to kill Wescott because they suspected him of being a spy. Sherman tells of the efforts made to get him down into Filley's tavern, and get him to gambling, as he was in the habit of doing. They were to set the table so that Wescott's back would come opposite a window, and there was to be a number outside with stones and other missiles; those who played with him were to blow out the lights, when ready, and jump back out of the way, and those outside would smash his head and shoulders with stones. They said that any railroad spy should be killed, and Wescott was one. He warns Wescott of his danger, and he escapes with his life. Another witness tells you that he heard Fitch tell Wescott in Filley's bar-room that it would not be healthy for any one to come out against them on railroad matters, for he would shoot him down on the street. Is it probable, gentlemen, horrible though it be, that they would have carried their threats into execution? The character of these persons—the business in which they were engaged—their bitter hostility to the railroad—render it not improbable that they would have carried out their fiendish threats to the very letter. If they would murder poor old Holmes—and they dragged him from his seat and attempted his life—if they would murder one of their own neighbors, to whom they were bound by neighborhood ties, at least, would they not do it with Wescott?—It would have been in accordance with their avowed principles, and with the horrid oaths by which they had bound themselves together. Were not their daily acts upon that road equal to murder? Was not murder in their hearts? Were not their steps over corpses, if they could but carry out their schemes? I ask would those, who at the hour of midnight, crept from their secret hiding places to hurl the

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cars, filled with passengers, into mangled heaps, by placing obstructions on the road, stop at menacing one who they suspected of an intention to betray them? No. Murder was in their hearts—it was in all their acts. Would such men not kill Wescott? Would the wolf devour the lamb? Would the jackall gorge himself with his prey? No more than these men would remove by death any one who might be in their way. Their design to murder Wescott is obvious. It is shown by the testimony too plainly to be avoided.

Woliver swears that Filley comes up to Albion to see him and to caution him against saying any thing of their operations against the railroad—that if he exposed them they would kill him—that they could not all be convicted if he exposed them, but that some would be left to kill him. And on this occasion, Filley was armed with a knife and a double barreled gun. Curious weapons of friendship these!

Mr. Cochrane says that when he watched the cars at the State Fair, he saw a couple of men come out of Filley's bar-room and cross over the track, and as they crossed over they spoke of widening the track. He lay there watching about two hours, and saw another man coming from the north; he walked back and forth over twenty or thirty feet, and after a while another joined him. This was about 10 o'clock at night. He heard the cars coming from the east, and the two men walked back north, and after the cars had passed they came back again with a third man with them, who came from Filley's with a gun and bayonet, and as the three came up one of them said, "They run so slow we can't do any thing with them." Another replied, "If we can't do any thing else, we can stone them like hell," and the man with the gun said that if he could see one of the d——d railroad spies he would spear him. I will not say, gentlemen, that these men were any of the defendants in this cause. The fact is not proved; but the presumption is against them, arising from other facts and circumstances that have been proved beyond a doubt.

Sherman's testimony is full of these threats. Old Mr. Champlin told him that so long as he remained with the boys, he was safe; but if he turned on them he would shoot him, and that if he could not get any other chance he would shoot him on the stand in court. Yes, gentlemen, here was murder to be committed before your tribunals of justice. Did old Mr. Champlin know of the oaths which bound these conspirators together? Most certainly, for he was the father of one, and one of them himself. The Prices over their whiskey jug, which was a favorite resort, made the same threats. Does Sherman tell the truth? Does Woliver? Does Wescott? And what other threats have been proven? Not only that they would shoot him, bnt that they would swear him into the State Prison. They would throng the courts of justice, and pervert them from their true purposes through perjury. This is established by a multitude of witnessses, and no successful attempt has been made to controvert or explain it away.

Does it startle you, gentlemen, that such things should take place in a civilized community—in the centre of the State of Michigan—in a land of law, and where the laws are but a transcript of the popular sentiment. Well it may. Such facts, established by incontrovertible testimony, are enough to startle any one, and make them tremble

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for their own safety. Did they not tell Brown that they meant to stick together, and if they found any spies they would fix them so they could not watch or spy any thing else? How was it in the Lester case? Did they not boast that they had rescued him from the hands of the law, and glory in the crime through was it was effected.

Would men who would imbue their hands in blood—who had endangered the lives of hundreds of men, women and children, along that road—hesitate at any crime? Was it not in the bond between them that they should pursue even unto death, any one who should betray them, or attempt to detect them?

Mr. Sherman tells you that they boast of having among them men of influence besides Dr. Fitch—men who can't be impeached; but that they can impeach any man in the State and swear him into a State Prison. This they repeatedly told him. I will read from his testimony. (See testimony, Sherman.)

Mr. Sherman also testifies, as well as Mr. Dixon, to the fact of Fitch's calling Woliver aside several times, on a certain occasion. I will read from his testimony in relation to putting obstructions upon the track. (See testimony, Sherman.)

Another witness also tells you of these plans. Mr. Wells tells the same story in relation to a conversation upon the same subject, at the dinner table in Fitch's house. (See Wells' testimony.)

Then he goes on to tell you about what occurred back of Filley's house in relation to the track, and the bars spoken of by the witness Brown—the proposition of Jack Freeland. I will read what he says upon this point. (See Wells' testimony again.)

I wish you to keep in mind, gentlemen, that I am reading the plans, threats and confessions of these defendants in relation to what they proposed to do to the road, and to those who might come out against them. I will now read to you from the testimony of Mr. Spaulding.—(See Spaulding's testimony.)

Upon this point we have the testimony of several witnesses.

On the occasion of the throwing off of an engine, we have shown that Dr. Fitch repaired to the spot with a large knife concealed in his sleeve. Why did he think he might have use for a large knife? It is true, limbs might have been broken, brains might have been dashed out. Surgical instruments might have been wanted—but what use had he for that knife? There was evidently, gentlemen, murder lurking in his heart, or why conceal a deadly weapon in his sleeve? We have shown a murderous purpose, and therefore we can come to no other conclusion than that this knife was designed to be used in some way in accordance with his general purpose of destruction.

You see, gentlemen, I have no mawkish sympathy for Mr. Fitch.—Though removed from earth, from beyond the judgment of this tribunal, yet he comes within the scope of my case. I shall, therefore, speak plainly of him and of his acts—"nothing extenuating and naught set down in malice."

> "Not florid prose nor honeyed lies of rhyme,
> Can blazen evil deeds or consecrate a crime."

If he is innocent, his counsel owe it, as a last duty, to vindicate his memory. But that is no task of mine. I shall tell you plainly and

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fully what is proven. The effect of it I am in no wiseresponsible for. There is a little bit of testimony of Mr. Dixon, which shows the suspicion with which those who went out to take care of the interests of the railroad were regarded. I will read what he says occurred between him and Jack Freeland. (See Dixon's testimony.)

What, gentlemen, does this signify? Why did Jack Freeland fear Dixon's soft soap? Had he meddled with Freeland's interests? What had he done that he should be shunned and avoided? Would you gentlemen—would any honest man thus have acted? What were the grounds of the suspicions on the part of Mr. Jack Freeland? What had he been doing that he should avoid Mr. Dixon? Does it appear at all in the testimony that he had wronged him, that he had insulted him, or injured him in any way? Upon the cars Freeland congratulated himself that he had had nothing to do with Dixon—he had said nothing to him, and therefore, should he be a railroad spy, he was safe. But the very means they took to avoid Dixon, is evidence of guilty fear. With a short-sighted policy, which defeated its own objects, they showed by this action towards Dixon that there were fatal secrets to reveal. The very silence he observed—the reserve he boasted of, and his refusing to sell his wheat to him, though he offered the highest prices, showed that he supposed Dixon to be a railroad spy, and they would have nothing to do with him.

I will read, once for all, the testimony of Dixon in regard to Mr. Fitch: (See Dixon's testimony.)

It will be seen that Mr. Fitch calls these mild means. Now, then, Fitch was a cautious man, but yet his conduct on this occasion shows complicitly with these outrages. When he was told that one word from him would immediately put a stop to all this difficulty, what did he do? Did he say as every honest man would say, that it was no matter of his—that he had no control over the men who committed the outrages? He is found justifying these acts—saying they were "mild means," and that the company ought to pay for cattle, &c., &c. Now this would not convict him of the crime. But it goes to show a settled purpose—a malignant hostility to the road, and a determination to uphold and favor those who were engaged in committing depredations upon it. But one who could stand up at all times, and in public places, and justify the stoning of the cars, the placing of obstructions on the track, may reasonably be supposed to have some connection with these acts. It is a strong implication of his guilt, and when connected with his previous threats, becomes almost a matter of certainty. But Mr. Fitch affected to believe these acts to be right in themselves—to be acting conscienscously, even when endangering the lives of hundreds of innocent persons. Now there are cases in which it is held that unlawful acts involve no moral obliquity. But is this one of them.

I will take a familiar example in the case of slavery. It is held by a large number of our fellow citizens that the law which compels us to assist in sending a man back into slavery, is contrary to the law of God, and therefore, morally inoperative—absolutely void, and of no binding force or obligation:—That men have rights dating far back of human laws, and which can not be alienated. And notwithstanding slave-

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ry exists by virtue of a law of the land, that they are justified before their consciences and their God in evading, or even resisting this law, in aiding a slave to escape from bondage. I will not contend for the soundness of this doctrine—it is enough for my present purpose of illustration that it is religiously held by a large and respectable portion of my countrymen.

Now, if Mr. Fitch, by an ingenuous analogy, can prove to these men that this course is right, it will encourage depredations upon the road. If he believed in his doctrine, he would not only be desirous of enlisting others but would engage in committing the outrages himself. But if false—it he only assumed this position to induce others to commit criminal acts, the moral effort would be the same. I need not read the testimony to prove that he did do these things—that he did them in Morrison's grocery, in the presence of quite a large number of others, for the facts are before you.

We will see, gentlemen, what Mr. Newland says in relation to threats: (See Newland's testimony.)

You will see that Mr. Fitch said similar things at his grocery. He said that spies must keep off his land or he would give them cold lead, as he had guns in readiness for them. I do not know how soon Jack Freeland would shoot a bear, but he tells the witness he would shoot a man as soon, and Mr. Fitch proposes to give spies cold lead if they come upon his land. There, gentleman, are very distinct, positive threats. There is no mistaking the language or the intentions of these men. There is no mistaking either the fact that malignant passions burned in their bosoms, or that murder was in their hearts, only waiting a favorable opportunity for its perpetration. I will read further from Newland's testimony: (See Newland's testimony.)

Mr. Chadwick says: (See Chadwick's testimony.)

Mr. Roswell Chamberlain says: (See Chamberlain's testimony,

Now, this Mr. Lemm is a legal gentleman, who has been brought up in a profession which should teach him law, at least, if not morality. He paid Mr. Chamberlain a visit, for which he should be very grateful, and sought to make him a convert to his doctrine. He is out prosoliting, and approaches Mr. C. with all the sophistry and eloquence which he could command. But he is mistaken in his man.—Mr. Chamberlain had no sympathy with Lemm nor with his fiendish schemes and purposes. He comes here and tells you of his abhorrence of these outrages and of the conspirators who committed them. He tells you, too, of a conversation with Lemm about burning the wood by Corwin and Price. Lemm says he shall pity the company if they are convicted. And what is the reason? He tells you the reason. He says the safety of the public can no longer be expected. He speaks of the nightly crash along the line of that road—of fearful disasters at the dry marsh. What is Mr. Lemm? a lawyer—a Jackson county lawyer. That's the man who slept with the prisoners and was found in the straw upon the floor of the miserable cabin when he and they were arrested. Is it not a little strange that this man who had a wife and family at Jackson, only four or five miles off, should be found sleeping with the Prices several times during the season. What was he there for? Why this close intimacy between them? Would you,

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or I, or any honest man, with innocent purposes have acted thus?—And what he told Mr. Chamberlain was true. The deadly plot existed. Plans of general destruction and indiscriminate slaughter were matured, and those who formed them were only waiting a favorable opportunity to carry them into fearful effect.

Now, gentlemen, contemplate this state of things? What an insult to the loyalty of the people of Michigan, that a band of ruthless villains in the centre of the State should thus boldly endanger the lives of our citizens who might pass over this road—of the strangers within our borders—of the emigrants whom we have invited to come among us, unless the company would succumb to the demands of this lawless band of ruffians. I doubt not what your course will be. Although every house from Lake Erie to Lake Michigan shall be burned—although corpses may be strewed along the whole line of that road, the law will be executed—the ministers of justice, unawed, will be faithful to their high duties and solemn obligations. But they threatened it, and the threat is over us still. A spy is to be shot—a lawyer who prosecutes the cause of public justice is to be hunted down as long as he lives. The agent who is chosen for his talent, and capacity, for his high standing among his fellow men, is to be defamed, vilified, pursued by this band of villains. and for what? The testimony of the witnesses tells you.

The history of this trial is but an appropriate sequel to the testimony in this case. The attacks upon counsel in the court room—ceaseless, groundless attacks, for merely discharging an imperative public duty is but an appropriate sequel to the state of facts revealed by the testimony. But I apprehend that they have mistaken their men, as they mistook their man in Chamberlain. I apprehend that every man in the whole State out of this gang, will see this question as I have attempted to state it out before you—no one but who would peril his all to see the laws faithfully executed.

Mr. Chamberlain has told you of the character of Mr. Lemm's doctrine. It shows a complicity unfavorable to Lemm. How did he know that the company would suffer if Corwin and Price were convicted? How did he become acquainted with plans to throw the cars off the track at the dry marsh and elsewhere? It is easily explained. We find him at Fitch's. We find him at Price's repeatedly—going there, it is true, under the pretence of fishing, but what of that? In pursuing a course of justice probabilities are to be looked at. In treating of suspicious persons, we are allowed to bring in all the circumstances having a bearing upon their actions. How happened it that he always staid at Price's? Did he ever stay with any one else? I asked the witness the question, and he did not recollect that he had. No, gentlemen, Lemm was with the Prices so frequently for no other purpose but of mischeif—plotting and convening with them in their grand purpose of destruction.

Gentlemen of the jury, I will now proceed with some more of these interesting little incidents: (See Doudle's testimony)

Here you see again what was to be done at the dry marsh. Then he speaks of another conversation he had with him at a different time.

Mr. Rogers says: (See Rogers' testimony.)

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Now, gentlemen, the same season that Mr. Filley said this, Mr. Clark tells you that obstacles were placed between the hand-car and the locomotive. Although they took every precaution to prevent accidents, by going slow, and sending a hand car ahead of the train, yet, notwithstanding all this vigilance, they succeeded in placing obstructions upon the track after the hand car had passed. Mr. Fitch said he wanted it done, and Mr. Filley said it would be done, and, gentlemen, it was done. What is the natural— the inevitable conclusion then, as to the parties who did it. We can arrive at but one, and that points to these defendants, or some of them, as the guilty parties to these transactions.

What induced Mr. Filley's mind to be continually bent upon these schemes? Why was he continually talking about what would happen to the cars? And what induced Mr. Fitch's "grand invention" the time spoken of to throw off the cars, and which he wished secured when used once, that it might be used again? Did any honest man ever continually revolve such schemes in his mind? Did you, gentlemen ever think of the manner in which the cars might be thrown off the track, and the property of the company destroyed. No, gentlemen, there is something at the bottom of all this—some secret moving impulse governing the action of these men. And if such things are done—if the cars are thrown off in the manner that Fitch desired and Filley predicted, is there any doubt in your minds who threw them off? Filley said it would be done. It was done. What is the inferenee—the legal implication.

I ask you, gentlemen, what led Mr. Fitch to speak of placing a keg of powder under the track? What led his mind to think of it? Mr. Rogers tells you that Mr. Fitch explained how the keg of powder might be placed, so as to blow up the cars, which, had it been effected, might have killed hundreds. In concluding, he said he wanted it done. What could have been his object? Most plainly to ruin the road—blast its reputation—drive business from it and render it desolate. He had no general animosity against man-kind. He could not have wished to involve innocent passengers in the catastrophe, unless his heart was filled with passion from the lowest depths of hell. What, then, prompted these measures but hatred and hostility to the Railroad? And you may judge of the fixedness of the purpose of the man by the consequences he was ready to incur—the crimes he was willing to commit. It was not to commit murder against the public that he resorted to these measures. It was, I repeat, hatred of the road and its agents that prompted him.

I will now read you the testimony of William Dobbs. (See Dobbs' testimony.)

In regard to this Mr. Dobbs, I have not much to say. I do not know him—perhaps some of you do. But we must take his testimony as corroborated by coincident circumstances. On his first appearance on the stand, he struck me as a hard case. But he has told you a fair, probable story—a story that is strongly sustained by others. Do gentlemen tell us we ought not to call him? I reply, not so. If we wish to get at the daily acts of men—of Mr. Fitch—we must get it from such men as they daily associate with. Do they

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tell us Dobbs is not to be believed. We reply that he was the constant boon companion of Mr. Fitch. And so of Wescott, and Caswell, and others whom they have sought to depreciate. Do they object to Mr. Dobbs. I reply that from under their own roof we got him—from their embrace we brought him here. His testimony, such as it is, we present to you. If you believe it, and it is a probable story, what a state of things it presents. His testimouy establishes the facts in relation to planking over the track at Leoni. The proposition is distinctly made to him. I will read his testimony upon this point. (See Dobbs' testimony.)

And imagine to yourselves, gentlemen, the rapidly approaching train. There is seated the mother with the infant in her bosom—its own proper home; there is tottling age—the tender maiden dreaming of nothing but pleasure, and whose hopes are high—there are youth, and vigor, and manhood—there are talent and worth—there is a father returning to family beloved—there is a child hastening to the embrace of devoting parents—they are huried onward, right onward. These men, emerging from their secret hiding places, have nailed planks over the track at this fearful pass—a crash is heard, and groans, and shrieks break in upon the stillness of the night. This is the music that sounds sweetly in the ears of the conspirators. But is it true? Would they do it? Would they be guilty of the indiscriminate slaughter of innocent men, women, and children? Well may you pause, gentlemen, to ask these questions. But look at the dry marsh. Look at the obstructions that Spaulding run over. Look at Mr. Fitch handing pistols to these boys—and to his "great invention"—of placing powder under the track. Look at the attempt to kill Wescott, and then is it possible that Dobbs tells the truth?

I know that it startles you, and well it may. Such crimes, thus strongly brought home to the defendants, are examples to startle any man. But, gentlemen, before this trial concludes, you will be compelled to believe worse things than these.

I will, in this connection, barely allude to the proposition to Dobbs to burn steamboats, as evidence of the general plans of destruction of the property of the Company which these men had matured. But this, like the burning of the depot, is but a mitigated circumstance compared with other of their acts which involved the destruction of life as well as property.

Again, I offer to the complexion of this whole case to sustain Dobbs. I insist that he stands uncontradicted. It was at Mr. Kirkendall's tavern, at Michigan Centre—that centre of pollution—over a whiskey bottle—a favorite resort—that these men attempted to enlist Dobbs in their schemes of vengeance. They were excited—they spoke freely, and all the circumstances render the testimony of Dobbs probable. He was a man of the same character as the rest. What though he gambled with them—it matters not. He is just the man they would want for their purposes.

Now we will see what Mr. Nichols has to say. I will read a portion of his testimony. (See Nichols' testimony.)

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This man, you see, gentlemen, is no friend of ours. He is a respectable farmer, whose mind has become roused against the Company by the misrepresentations of these men, and who sympathized somewhat with them.

Gentlemen—The testimony in relation to Mr. Fitch's estimate of the company's losses has become important as corroborating the testimony of Westcott, and we have several other witnesses swearing to the same effect. What caused Mr. Fitch to make this estimate? Why did he take so much interest in the company's losses? Did it give him pleasure to know that losses had been sustained by the company? Yes, gentlemen, he took pleasure in it, he gloated over it, and carefully carries it in his mind.

I will now introduce to you Mr. Burnett. (See testimony.)

This, you will perceive, is equivocal testimony. I do not ask you to put a criminal construction upon it. I present it merely in connection with other circumstances, and ask that it may only have that weight in your minds to which it is entitled.

Gentlemen—As tending to show the existence of some fatal secret—something which the defendants greatly feared to have revealed, I shall allude to the testimony of Dr. Hahn. On the day of their arrest and on their journey to Detroit, he sat next Jack Freeland and some others in the cars, I will read what he says: (See Dr. Hahn's testimony.)

Now, gentlemen, I quote this in this connection, as evidence that they had something that they did not wish exposed. You will observe that they said nothing about Phelps accusing them falsely. They talked about treason and traitors. Now when there is a traitor, there is something to betray. The term treason indicates confidence. What was there in this case. Henry Phelps' name was in the warrant as informer—they had seen it there. Had the charges upon which they were arrested been false, they would have said so. But, no—one says to the other, "if we could get hold of Hank Phelps we would make mince-meat of him." This is in perfect correspondence with the whole train of testimony in relation to their threats against traitors and railroad spies. What explanation will the counsel give of this? Will they put any construction upon it different from what I have done? I wish Dr. Hahn was as well known here as in the community where I reside. Then, gentlemen, there would not be a particle of doubt in relation to the truth of his testimony in the minds of any. And I am assured that there is none in yours now. I allude to it here in connection with the burning of the depots in Detroit and Niles, to show that all these things were but parts of one grand whole, the details of a comprehensive scheme of destruction.

Now, gentlemen, under the head of threats, I wish to allude to what the witness English told you. He says that Fitch remarked in his hearing, that before another year expired, the company could not get an engineer to run the road. And being asked why, Fitch remarked that they had a plan by which the engineers would be driven off. Mark—English was not connected with the road; he is as

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independent of the company as you are. What did he understand Fitch to mean? That there was a plot that would endanger the lives of the engineers, and thus drive them from the road.

Now, gentlemen, this is a most important piece of evidence. Do counsel pretend that these are mere isolated facts, merely casual coincidences of time and place? I allude to the testimony of English as conclusive upon this point. Is there any doubt that English heard it? that Fitch said it? that Burnett said it? I again allude, gentlemen, as sustaining English, to the general texture and circumstances of this case. Does he not give you the best reason for remembering it—that every time a casualty occurred, it brought the circumstance fresh to his mind—and casualties were quite frequent about that time.

I shall now allude, gentlemen, as I pass along, to other testimony under the head of threats, as indicating the intention of these defendants. I refer to the testimony of Mr. Huntingdon relating to Jack Freeland. (See Huntingdon's testimony.)

Isn't strange that the neighbors down there, when anything of this kind occurred; knew so well who did it? Does not also the letter of Mr. Goodwin indicate this? Here Mr. Huntingdon says to Corwin, "You fellows down there at the Centre have done enough." Did Corwin turn round and say—"Me, sir! you accuse me of crime!" as an honest and innocent man would have done? No—but he says, "it is quiet now, but we are fixing for them." When was it that it was quiet? Last fall. Well, were they fixing for them? Were they preparing some plot? Had you been in this city, and seen the flames issuing from the cupola of the fairest structure in Detroit, lighted by a match applied by the hands of Washington Gay, you would have been convinced that they were indeed fixing for them, and that they would soon catch it! And this was Mr. Corwin, who is justly entitled to the bad eminence of being called the First Lieutenant of this band of conspirators.

Gentlemen—I have now passed over most of the direct testimony which tends to fix upon these defendents the commission of the long catalogue of outrages that took place last season along the line of the Central Railroad. I will now proceed briefly to review this part of the evidence.

Are you not satisfied that these things were done? Are you not satisfied that these men did them? Did they not plot them? Did they not talk them over? Did not Price and Corwin burn the wood pile? Did not Filley burn the lumber? Was not the Gazelle thrown off the track? Did not Fitch repair to the scene of the accident with the knife? Did not Filley propose to Brown to take up the track with the bars? Where not obstacles placed upon the road at various points? Where not the cars stoned and fired into? These facts are established by at least fifty witnesses who tell you of the meeting at Filleys. But do they tell the truth? Are they sustained by coincident circumstances? Gentlemen, have you any doubts upon these points? Can you have? I have none—not the least and no impartial man can have.

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And what is the defence? They have attempted to prove an *alibi*. It is weak, vain and futile. What though our witnesses might have been mistaken upon a single point, or in relation to a single individual. The mass of testimony which the nature of the case has compelled us to produce, is overwhelming upon the material and essential points we set out to establish.

How is it met? Why Mr. Howard in his opening for the defence, told you on his honor as a Counsellor of this Court, and with a most triumphant air, that he would show you a conspiracy on the part of the prosecution. That the witness Phelps, Wescott and others laid these plans to destroy property and endanger life and then come up here and attempt to fasten them on to the defendants. I do not doubt but that he at the time believed he could do it—could perform all he promised in his opening. If he had not, the announcement would have been bad policy, and still worse morality. He knew by whom he expected to prove these things. He knew that they relied upon Jack Adams and a certain Mr. Billings. What was the result? When Phelps was upon the stand, they asked him did you not tell Mr. Hawley, of Indiana, that you intended to throw the cars off the track? Did you not attempt to hire him to burn the Depot? Phelps looked cooly at Mr. Hawley who sat in the court room near him, and replied that he did not even know Hawley—that he had no recollection of ever having seen him. The same answer was returned to the questions, in relation to Dyer. We watched anxiously for the appearance of Jack Adams upon the stand, but he did not come. We wanted them to bring him into court, but they dare not do it. They had learned that there was a mine under Jack Adams, and that we held the torch to blow this miserable subterfuge of a defence sky high. And Mr. Cooper, by whom they were going to prove so much, where was he? We hunted him through Michigan and Upper Canada, and brought him here. They had an opportunity to ascertain what he knew of this fearful conspiracy on the part of the prosecution, but they dare not embrace it. And Jack Adams has been permitted to pursue his usual avocations in the service of the state, and I will not say what those avocations are—unmolested by the counsel for the defence. Here we have been for weeks, but they dare not call him; who was their main reliance on the opening of the case by Mr. Howard. And they sealed Cooper's lips and would not let him say a word. Ominous silence! Why this change? Where the evidence of this conspiracy which they were so confident of establishing?—vanished—vanished into the air. And how have they proved that our witnesses, Phelps, Wescott, and the others, put these obstructions upon the rail road track? Where is the evidence of this? Like Jack Adams, it has not been forthcoming. We have looked for it in vain. They have not produced it.

I conclude here, gentlemen, this part of my argument. I insist that these defendants have been proved guilty of the charges preferred against them. It has been proved that these are the very men who committed that long series of crimes against law—against the peace of the people of Michigan, and against the interests of the

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west, which form the ground work of this prosecution. It has been proven as clearly as human testimony can prove it. There is no avoiding this conclusion. The testimony of our witnesses has been sustained by every circumstance that has been developed during the progress of the trial.

You will have noticed that I have but simply alluded to the testimony of Wescott. I contend that the first part—conspiracy—has been proved beyond a shadow of doubt. The evidence of Wescott, I shall urge, proves the existence of the conspiracy. I will read in relation to the extent of the conspiracy:

[See in relation to agreement.]

In brief, I would say that the understanding among these defendants, was, that they should, as physicians say, pursue their measures to the point of relief. You know what that is. When a physician has a desperate case, he resorts to a desperate remedy, and pursues it to a point of relief. That is until relief comes, or the patient dies. Such appears to have been the measures resorted to by these men. Unless the Railroad came to their terms, they were to be pursued to the point of relief. I will not say what those terms were; but we insist that the understanding—the bond between these men, was that the Railroad should come to their terms, or they would continue indefinitely to pursue their measures of general destruction.

There are different modes, gentlemen, in which agreements may be entered into. When a man goes to your store and procures an article, the presumption is, that he agreed to pay for it. The act is prima facia evidence, which only can be met by positive proof that he received the article as a gift. The law presumes it, and the contract is construed according to his actions. The criminal and civil law are alike upon this point. A man is presumed to consent to a crime, if it is committed in his presence. And the presumption becomes much stronger when he afterwards speaks approvingly of it and justifies it. Such acts are made the grounds of evidence against him. This is a general principle, and we propose to apply it to the conduct of these defendants—to their acts—their threats—and the coincident facts and attendant circumstances. We contend that the evidence shows a close, an intimate, and inevitable connection between their actions and threats and the outrages and crimes which have been committed, and to punish which, this prosecution was commenced.

What object, gentlemen, could these men have had in developing their plans of destruction, if they did not mean to carry them out? And then they had the means—all the means that the ingenuity of thirty or forty men could invent. There were guns fired into the cars—ties removed—obstructions laid upon the track—wood burned—murder plotted and contrived—embracing, to be sure, gentlemen. a beautiful category of crimes, running up from the lowest to the highest known to our laws. Their means were the most fiendish human ingenuity could invent. They made them public—they proclaimed them far and wide. From these means, so well adapted to accomplish the outrages which were actually committed, we have

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a right to infer, even in the absence of any corroborating testimony, that all this was in pursuance of a general understanding. If the cars had been only stoned, we should infer that they only meant to stone them. If they had only been fired into, that they meant only to fire into them. If they had only run them off the track, that this was all they had covenanted to do. And so through the whole series. But when we find the acts exactly corresponding with the threats all the way through, and with the means provided, we cannot avoid the conclusion that one line of action was pursued throughout. I might, but it is not my intention to carry this illustration farther at this time. But we have seen that every possible mode of destruction that could be invented by the ingenuity of these thirty or forty men, were resorted to. We see that the facts transpired exactly as they threatened, and as they predicted. What is the inference? What is the presumption upon this state of facts? I stab a man to the heart—kill him. The law justly infers that I meant to kill him. I used the means. This is just the case with these defendants. They used exactly the means necessary to produce the results which were produced.

I contend that this is established beyond doubt or controversy. It is established that they were prepared to use fire—one of the most destructive of all elements. They did use fire—they burned a culvert, and those who went to extinguish the fire could not get a pail in all Michigan Centre. Fitch told them sneeringly that they would have to go elsewhere to procure pails to save the property of the railroad. It is shown that combustible matter—logs, &c., was placed in the culvert, to ensure its destruction. It is proved too, that they proposed to use gunpowder to blow up the track, and they spoke boastingly of what they were going to do, and approvingly of what had been done.

And now I proceed further. I insist that they proposed to go further. They proposed to burn up the structures along the line of the railroad, including the Depot in Detroit. A depot was attempted to be burned at Jackson; read the testimony of four or five witnesses upon this point. Does what they tell you leave any doubt in your minds.

And I will ask, does this startle you? Does it startle you at this stage of the proceedings? Does it startle you that such things could be in a civilized community.

Mr. Van Arman here remarked that he felt himself getting hoarse, and as it was half-past eleven o'clock he asked as a favor of the court, that it would now adjourn. He would endeavor to conclude his remarks in the afternoon.

Mr. Van Dyke hoped the Court would adjourn without any intimation on the part of Mr. Van Arman, when he would conclude; he hoped he would take his own time, as the subject was far from being exhausted. The Court then adjourned to two o'clock, P. M.

FRIDAY AFTERNOON.

Mr. Van Arman resumed.

The arguments I have addressed to you thus far, has been direct-

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ed to the purpose of convincing you that the defendats were the persons who committed the outrages enumerated; and further that they acted in concert—that there was understanding and concert amongst them—that all their acts indicated a joint secret purpose of hostility to the Central R. R. All their acts were directed to the accomplishment of this purpose. I have stated to you that they threatened to burn the depots belonging to the Company at different points, and stated that they had actually employed fire as a means of destruction; and it now becomes my duty to pursue this line of argument, to show that they did attempt to employ fire in the destruction of the dopots at different points. The enormity of this charge may at first startle you. In human society nothing so excites the execration of all men alike as the exhibition of wanton malignity and revenge. No crime is so odious, few so dangerous as arson. It is prompted by pure malice, no other passion seems to enter into the motive as a general thing. The man who robs you may be guided by motives of a mixed nature. Something good, something human may enter into his motive; but the incendiary is influenced by motives drawn from the very lowest and darkest depths of our nature.

But I would ask you if the motive which prompted the outrages I have enumerated, upon the public, was not fully adequate to induce the commission of the crimes which we charge these defendants with having attempted, or even the very crime charged upon the record in this case.

Do these crimes require or indicate any additional or different motive from that which induced the destruction of the R. R. The wilful destruction of property is not mitigated by the addition of murder. If these men would destroy property, and in so doing would jeopardise life, not of a few but of a multitude, would they require any additional inducement to commit this crime. Can you conceive anything more atrocious than the spirit manifested by their conduct.

But without dwelling upon the motive, I shall insist that such destruction was attempted by these same men, and it was an act better caculated than any other to effect their ends. Such attempts, if proved, will weigh strongly in your minds in favor of the testimony upon the subject of the burning the particular depot in question. I do not insist that because they destroyed property they burnt the depot; but if we show them possessed of a malignant motive and prove that the burning of depots was a part of the general design, we prove much; for then it is only a particular embraced within a general. Their general plan or design is destruction until they can bring the company to terms. Wholesale destruction—is not that their own admission.

From such a design we derive a strong argument to support the evidence which charges them with burning the particular depot in question. Their general motive is injury to the reputation and interests of the railroad. And what would more seriously affect those interests, and the reputation of the Company, than the destruction of the depots.

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There was stored the property of hundreds of people from every part of the Union. From the Green Mountains, from New York, and from the fertile plains of the west;—here was stored the property, the chattels and effects of the emigrants—the poor man's means of livelihood, the rich man's hoarded wealth. Business in every part of the Union would be affected—confidence would be lost—the security of property would be shaken. A more effectual mode of injury and annoyance could not be devised by them. Now examine the evidence? can they be shown to have omitted any opportunity of destroying the property of the Company.

If they destroy property in one way would they not in another. When a rational man proposes a given object, no matter what the object may be, his likeliest course of conduct will be to employ the readiest means, and if this means was certain and ready to effect the purpose of these men, would they not employ it? It may not be conclusive, but if a man threatens to destroy your property, even though it may be only in an unguarded moment, and your building is burnt, you have right to suspect and arrest that man, and charge him with the crime, on the principle that we have a right to take men at their word.

Authorities will be read on this point. Courts have instructed Juries that where buildings have been burnt or murder committed, and threats have been made, it required but slight evidenceto convict the party making such threats of their execution.

This rule is based upon the plain,obvious and rational grounds that a man's words furnish some, if not conclusive evidence of his purposes and intentions. This rule obtains even in case of mere threats, though perhaps hastily uttered. How much stronger, gentlemen, does the probability of the execution of these threats become, when we find them reiterated through the space of two years on numerous and divers occasions. Plans and schemes deliberately formed for their execution; the sincerity and dangereus reality of these threats and plans, proved and established beyond the probability of a doubt, by the preparation of tools and instruments for their execution. Nay, by the actual execution and accomplishment of these plans, by the perpetration of crimes of a much deeper dye than the one now charged.

The law on this point will be read to you, and you will hear the instructions of the Court.

I shall call your attention to the testimony of Wescott, and shall now speak of his credibility. An attack upon him was expected, because it was in accordance with the base conduct and general plans of these defendants, as often avowed by them, and eminently necessary to their defence. The attack has been made in every possible mode. The counsel heaped upon him every epithet that hatred could supply or language express. Attempts were made to taint his character, but no attempt was made at general impeachment. After all this storm of abuse and calumny which has beat unceasingly and with pitiless violence on his head for three months, how does he stand in your judgment? The grounds of belief or disblief of human tes-

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timony, we can scarcely explain. The manner, bearing and general deportment of the witness upon the stand furnish a general reason why we believe or disbelieve him. So it must be with your judgment of Wescott. But some considerations are capable of being stated. If a witness comes upon the stand and relates his story, if it be long and embraces a multitude of particulars, and if upon a cross examination the witness repeats the same story, if his testimony remains unshaken it is much, very much; for I venture to assert that no man lives who can come upon the stand and relate a falsehood twelve hours in length, no matter how ingenuous he may be, but under cross examination he will be detected. A skillful counsel will never fail to detect the falsehood in a shorter time than was required to relate it. Human ingenuity cannot sustain the trial of a close, searching cross examination. How did Wescott stand this ordeal. Men thoroughly practiced in the first courts of law in the Union for years, men who have been trained in all the artifices and the subtilities of the law, unsurpassed for skill and ingenuity, have for many hours exercised upon him their utmost skill. Did they shake him? Not at all. I refer you to his testimony to see if they have succeeded in drawing him into even apparent contradiction.

I will leave you to judge of the manner in which he acquitted himself himself as it must be fresh in your recollection. Two facts only sworn to by him, they attempt to contradict. He said he went to Fitch's window; they say he did not. Fitch did not sleep there—he went through a picket fence, they said he could not. You have seen the fence, whether he could or could not you must judge—have no doubt that he got through, perhaps not at that precise point, but he might not remember the exact place.

What was the material fact? that he heard a conversation at Fitch's window. The time—the darkness of the night being taken into consideration. I ask you, might he not have been innocently mistaken? Might it not be true that he went six or eight rods further up from the house, than he from recollection stated to you. That he could have got through at a different point, a little further west is evident. The fence itself bears evidence that some one had there gone through; it is plain that he might easily have done so, and if you should be convinced that he did not go through at that point, would that convict him of perjury? They say Fitch did not sleep below at that time; they have brought up witnesses to prove it. Do you believe that Mr. Fitch slept in that bed-room from the 6th of July until after the State Fair.

What testimony have they brought first, the hired girl? Do you recollect the confused manner in which she swore—but it appeared she had lived there but nine weeks, and that would not cover the time. She was a servant to Fitch—had been in the charge and keeping of Mrs. Fitch. Every influence had been brought to bear upon her. Take the testimony of Mr. Burr, who came here under as favorable circumstances as any other witnesses, he was no enemy to Fitch and a stranger to the prosecution. He swears positively and distinctly that he was there on the 29th day of August, early in

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the morning and he found Fitch sleeping in the bed room below—further, that two or three times just previously he remembers that he had seen him coming from that bed room in the morning with his clothes in his hand—Fitch was in bed and came out partly dressed, with his clothes in his hand.

Mrs. Fitch contradicts him, and I have not a word to say as to her testimony. Dr. Backus says he was the family physician till within the last three years, and he never knew them to lodge any where-else except in the bed room below.

We proposed to give Fitch's admission, that he lodged there and heard the spies under his window and to fix it to the time Wescott was there. In consequence of Fitch's death his admission was overruled, but I am convinced that you will regard the testimony of Mr. Burr with confidence. Next they say he could not have got under the house and they brought a little boy to testify that he could not crawl under—that the hole was too small. Wells tells you that he helped to make an aperture last fall, and it was then as large as it is now. I ask you for what purpose it was enlarged since? Was there any reason for it? not the slightest! If they wished to get under the house it was the easiest thing to take up a board to get down—but Mr. Clark tells you that immediately after the time Wescott mentions, his attention was called to the aperture by Wescott, he examined the hole and it was precisely the same then that it is now.

I need not speak to you of the credibility of Darius Clark, for all know him, and he says there appears no trace or appearance to show that it has been enlarged. This is clearly true, either Mr. Clark has stated falsely or that poor little boy has been trained to commit perjury, for the hole is now so large that the largest man in this court room might go in, turn round, and come out again with ease.

Whether the statements of Wescott on these two points, sustained as he is on both of them by other credible witnesses, has been successfully contradicted, I shall leave you to judge, without further comment at present.

The efforts of counsel to disgrace and discredit this and some other witnesses have been unwearied and persevering They have tracked them through the whole course of their lives, seizing with avidity and appropriating to their purpose, with malignant ingenuity, every act which could support an accusation, or point a sarcasm. Their faults and follies have been rehearsed, their very misfortunes paraded before you, and not a suspicion or accusation ever conceived by human malignity or uttered by the tongue of calumny against them, but has been revived, collected, and laid before you. Indifferent to the virtues or merits of these unfortunate witnesses, they treasure their faults and vices, and from them alone erect a standard by which they ask you to judge of their character. So the scavenger, as he creeps with bended back and earthward eye along your city thoroughfares, shuns habitually every pleasant spot; your spacious, cleanly avenues, your swept and shaded walks, with senses perverted by his foul calling, he visits only the shunned and loathsome

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places, the foul receptacles of useless and rejected matter. The narrow and filthy alley, reeking and noisome, disgusting to every sense, attracts him, and with nice and eager scrutiny, he traces its slimy labyrinths, exploring every half-filled ditch, sounding each stagnant pool, seeking only what others shun, selecting and treasuring only what is foul and odious.

And would any man have you judge of the police of your city and the cleanliness of the inhabitants, by the foul accumulations thus collected.

As with the habitations of men, so is it with their lives. Every man has his vices and his virtues, and his conduct and course of life is never of even and consistent tenor, and he who plays the scavenger can find in the path of any man, many a choice morsel for malignity to gloat over, will find enough—indeed, too much—to gratify the depraved and perverted feeling which can alone induce the search.

But what, after all, have they been able to discover, with all their malignant diligence and zeal, in the course and current of Mr. Wescott's life, which tends to his disgrace and discredit? What crime, what disgraceful act (for these are the only acts they would allow to be proved) has been shown? His history of his life since his boyhood has been spread out before you, his life to all practical purposes has been passed in your State and within a few hours ride of your city; his reputation for truth and veracity was open to attack; he had his last residence in Jackson County, where certainly, if it were bad, they would have found little difficulty in establishing the fact. Yet they have not seen fit to attack it. He was the chosen friend and intimate associate of Mr. Fitch, who introduces him on all occasions to his friends, attempts to procure him to locate next to him, and up to the time when Wescott became suspected of being a traitor to these railroad secrets, neither Fitch nor any of these defendants ever uttered anything but praises of him. But what, according to the evidence, has been the course of his life? Have his occupation and associations been reputable or disreputable?

He was engaged in the mercantile business and failed; many an honest man has done it—it is an incident that occurs to a great portion of the mercantile world at one period or other of their lives, not only in the west, but throughout the world—it cannot effect his credibility. But they say he was indicted, at Mackinaw. Was he guilty? The indictment was discontinued, there was no instigation. It was pending for a sufficient length of time to bring it to trial, and it was not done. The presumption must be that the man was innocent notwithstanding the indictment, until proved guilty, this would be the rule if he were on trial. When a man is unfortunate it takes but a small measure of proof to procure an indictment against him; unheard as he was, this was easy, and the fact can show nothing against him.

Is there anything in the history of his life to effect his credibility? He has been trusted by men of business, he has been the confidential agent of men of sagacity and prudence. Property has been

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placed in his hands, and their interests confided to him. He has managed for others, he has been in the mercantile business for himself. Have they shown him guilty of misconduct? What room is there to suppose that he would basely perjure himself? They may say he was a spy, so was Dixon, so were other men.

The merits of this and every other act is measured by its utility. And no matter whether it is the Irishman, shovelling in the ditch, the merchant behind the counter, or the statesman in the Hall of Legislation; their acts and conduct must be judged by the same standard, their utility necessity—are they promotive of the public welfare.

If they acted as spies from necessity, from regard to human life, then their services were meritorious, and I claim it as a merit that they so acted.

No inducement was offered for perjury or falsehood, he was paid by the month, not according to his success. The very imputation of any other arrangement would tend to disgrace the character of the man who employed him. That the agent would make any arrangement to induce this man to perjure himself, is an insinuation which will fall perfectly harmless.

Where is their motive? That they would wish to protect the property of the railroad, to detect and prevent depredations on it, is certainly reasonable. But they could have no motive to punish innocent men. They said to the persons they employed go and make the best exertions you can. A specified price was agreed upon or no price at all. But the compensation in no way depended upon the success of the persons so employed.

Wescott is a man of intelligence, would he basely perjure himself without a motive?

But while there is nothing to impeach his character and little to discredit his story, there is much to support and corroborate it. Dixon tells you he was there at the time he states he was, and tells of their change of manner towards him after they discovered he was a spy. All who testify on this subject, say that he was at Filley's frequently, was intimate with Fitch, that the intimacy continued as long as he describes; that Fitch had him by the arm, sought his society, was intimate with him as long as he describes.

Again, his life was threatened; and he tells you that he heard threats against his life, uttered by the defendants, in Filley's barroom; and it is confirmed by Sherman. Westcott subsequently tells you that he heard they regretted they had not put their threats into execution.

The very language they used, could be recognized as coming from the lips of these very men.

We answered promptly he could not have invented it. He related natural circumstances that go to corroborate his story. The general tenor and effect of his testimony is confirmed and corroborated by all the other witnesses, as to the plans of defendants.

Mr. Westcott's testimony was here read as to the stating a conversation between Filley and Corwin at Filley's, about burning the depot

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at Jackson. How readily and naturally the idea, of being sued for the timber, would give rise to the remark that they would want more timber before long. How natural and probable the remark, that the shavings would render it easy to burn; but he does not stand alone. Mr. Caleb Lowd's testimony shows that they had a design to burn these buildings, and that Corwin was acquainted with the fact. Caleb Laud is a man of veracity, living in Jackson, no friend of ours, an independent witness. What does he say? Mr. Caleb Laud's testimony was read, showing that Corwin stated to him, in March, 1851, that the depot at Jackson would be burned before long.

Now turn to the testimony of Mr. Lake, who swears that at this very time they had hired Mount and Jackson to burn it. Mr. McMichæl, a man who is unimpeached, tells you that Corwin tried to hire him to burn it, and said that Fitch and others would pay him. P. Moran says that he (McMichæl) and Corwin were together at that time, at his grocery. Mr. McMichæl had kept the Astor House a Jackson; and a man who would retail liquor at the Astor House, was doubtless thought by Corwin, a fit man to burn buildings. He was, however, mistaken.

Morgan Westcott tells you that he was acquainted with McMichæl, and not with Corwin. He says that he heard the conversation, and was afraid that Mr. McMichæl would be induced to do it. He conversed with McMichæl, and McMichæl told him that he did not intend it.

I can find nothing to discredit the testimony of these two men; and I insist that every thing supports their testimony—nothing disproves it. What does it prove—that in the fall of 1850, a design to burn the depot was entertained by Corwin and Filley, at least. Corwin says that Fitch and others would pay for it, and this tends to implicate them. It goes far to support the testimony of Mr. U. D. Wescott, when he swears that Fitch told him of a design to burn several depots about the same time: that they would run the cars off at four or five different points, duing the time of the State Fair. He tells you the number that Fitch thought it would be necessary to murder, before he could bring the Co. to terms; and at the same time he tells him that if the vigilance of the guards and the precaution taken should prevent this, he would burn the depots.

Wescott communicated the startling fact to the Co., and they promptly acted upon the suggestion; and it is highly probable that the safety of the public and of the property of the Co. was preserved by their immediate action. One hundred men were sent on to the line of the road, and these men were compelled to abandon their designs. We attempted to prove the identity of men who were overheard by Mr. Dyer, of Jackson, arranging a similar plan, in a back alley, one night in Jackson. At that time, from the darkness of the night, it was found impossible to identify the persons, and the testimony was necessarily excluded. I ask you whether this testimony of Mr. Wescott, being true, the purpose and design of burning was not as general and as sweeping as their other purpose of destruction and revenge?

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While under this head, it may be proper to call your attention to the testimony of Phelps and Lake, as to the burning of the depot at Niles. Did these defendants, or any of them, attempt to procure Phelps and Lake to burn the depot at Niles? Did they know of the match delivered to them at Filley's, and to what purpose that match was to be applied?

No matter who madethe matches or which of the depots were to be burnt—did they know what was the object? did these men know what was intended, or did Phelps deceive them?

Let us look at the evidence. 'John Faulkner's testimony read, showing the delivery of a match to Phelps and Lake, at Michigan Centre on the evening of the 11th of April and the conversation about the job at Niles, &c.' One of the counsel admitted that Faulkiner told the truth, that there was a manner about him that carried conviction that he was a man of veracity.

Mr. Seward would wish the counsel to refresh his memory.

Mr. Van Arman.—I think that Mr. Seward said so, at any rate, Mr. Howard did. If the counsel wish to withdraw the admission I have no objection—his veracity rests upon a much surer foundation than the admission of the counsel. The counsel said that he had been the dupe of Phelps, but there are four men less liable to be duped than John Faulkner, and when he knows anything few can state it more understandingly, as the counsel found to their discomfiture when they utterly failed to dupe him themselves.

You will believe him honest I am certain, and if so, you must believe that what he said is *literally* and *accurately* true. He was certain of what he heard—he was positive as to what he saw.

When a person hears a conversation without any particular motive for recollecting it, he may pay so little attention to it as not to understand it, or if he understands he may forget it, and except recalled by other circumstances, it may never recur again to his memory.

But when John Faulkner went from Marshall to Michigan Centre and put up at the tavern of Filley with the express and special design and purpose of noting each particular that occurred there, and the next day came and stated to me what he had seen and heard. He could not well be mistaken, and he could not see and hear as much as he wished, but what he did see cannot be disputed.

John Faulkner's testimony read about what occurred the night of the 11th of April, at Filley's.

I would enquire of you if Mr. Corwin and others knew what use was to be made of that box? It is proved that Phelps and Lake took the box, went to Dexter and to Niles upon Saturday. Upon Monday following Darius Clark and myself were coming to Detroit and saw Mr. Ammi Filley at the Depot in Jackson evidently waiting for Phelps. Spaulding tells you that the moment Phelps got from the cars, Filley came up. Phelps says he told him he had not made more than nine times. This expression was overheard by myself. Filley tells him to hurry to the Centre for the boys were waiting for him. What impression does it make upon your minds? These de-

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fendants say they went to Filley's on the night of 11th to roll nine pins. Why, then, if that was the purpose did they not roll nine pins? They utterly forgot the object of their meeting—nothing was ever said about rolling? other interests occupied them, when they arrived there.

Take Faulkner's evidence and you will perceive that they had some secret design—some plot that was to be kept amongst them. He was a stranger, and pretended to be half asleep, some one said he was a stupid Irishman,—still they talked privately, they had conversations they did not want any one to hear.

What was this matter of privacy? It was something that was to be done, at some place other than where they then were. Phelps was to go somewhere, a job was to be done by him, the performance of which would cause mirth and exultation amongst these men; it was to form an epoch in their lives. Phelps was to do it—it was to be done before he came back. Their words were, "when he gets back we'll have a time." What could give these demons more pleasure—what would furnish more cause for rejoicing than such a job as he was about to do? And the ground of probability is that these men were accustomed in this place to talk upon this subject a hundred times; they have consulted there upon similar schemes. It was to be at Niles, Phelps was paid partly in advance, the rest was to be paid when he came back. Does it not fully confirm the testimony of Phelps. What did he mean by saying to Filley that he did not make more than nine times? Why were fifteen or twenty men waiting impatiently for his return? Why was his success to be celebrated by mirth and revelry.

But the counsel have offered a compromise, they suggested that it was a meeting for the purpose of arranging a scheme for passing counterfeit money. Could that box, the size it was, have been believed to contain false coin. Corwin had it in his hands, he dropped it and caught it when near the floor. If filled with coin, Corwin could not lift it, if half filled he scarcely could, and could not have caught it up when he dropped it. Again it would have gingled so as to have been heard all over the house. Neither could that explain the conversation that passed that night. If these men had been counterfeiters, and were arranging to pass their spurious coin, they would have gone into and examined the money. What would be the main question that would arise? Clearly its quality. Lake brought the box there, it is said that day, they would have been eager to test its quality. They would have examined, counted and discussed its quality, and judged of the probability of passing it. Was that done? Not a man entered the room—it was not examined. Again, if Phelps and Lake were the men who were appointed to pass it, why should they be paid in advance? why, they were the men who should have paid the others, they had the funds they should have paid each his proportion.

There is no reason to believe that these men were on an expedition to pass counterfeit money—no proof, and the hypothesis is absurd. Various other considerations occur to my mind to disprove

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it, but I will not trouble you with them now, it will be time enough when the counsel have settled upon what theory they will adopt. I ask you if it is not conclusive that the persons in the room knew what was in the box. Who manufactured it, is another question, which I shall not shrink from meeting at a proper time.

Now I say that upon the authority of this evidence, and that of Phelps and Lake on this point, I have proved that these defendants, or some of them, did talk of and intend burning the depots and property of the Central Railroad Company, that they attempted it at Jackson and Niles at least.

Suppose Phelps and Lake made the match and left it there, though this is utterly denied, if they knew and consented, it is as much an attempt as if they made it themselves. It is a matter at present of no importance who made the match, the only question I ask at present is, did they know and consent to it.

Mr. Hudson for the defence admits the fact; Mr. Hay admits the fact that he saw the box delivered, but pretends he did not know what it meant; and you will remember that the attempt to burn the depot at Niles was subsequent to the burning the depot at Detroit.

I next insist that it is proved that the depot in Detroit was burned by an incendiary. You have heard the testimony of a multitude of witnessess as to the origin of the fire.

Some have stated that it originated in the cupola, others that it did not. You have heard the testimony of thirty or forty witnesses, and you will, I doubt not, come to the conclusion that the relation of Capt. Turner is correct. He was laying alongside the wharf, about two or three o'clock he was aroused from his sleep by a boat grazing against the side of his ship. His attention was directed to a light in the cupola, small at first but clear, so that he thought it was a lamp; it turned out to be a fire. I believe that this is the earliest knowledge of the fire that we have. Where did the fire commence? Giving equal credit to all the evidence, most unquestionably in the cupola.

Is there any machinery there? Yes the head of the Elevators, and they had been working them until half-past eleven o'clock the same night, while at the very earliest the fire broke out at two o'clock.

Some of you are acquainted with machinery—its velocity—its arrangement—and are better able to judge of its liability to take fire by friction than I am, perhaps than the witnesses.

You have had the testimony of numerous machinists, men skilled in their profession, and not a man pretended that there was any liability to a fire from friction. The testimony is that the machinery could not take fire by this means, and the persons in the employ of the railroad tell you that it never was found to heat, never got warm to any extent.

There was no light that evening in the cupola at all. One witness stated that he blew out the last lamp at half-past eleven o'clock that night.

There was no candle carried through the building. The candles

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were fixed in tin sconces, and lamps alone allowed to be carried through the building.

Did it burn like a fire occasioned by accident? You will see in an accidental fire a dense volume of smoke, then flame involved in smoke. This burnt with a clear light, like a lamp, and then burst forth in a column of bright flame.

But it may be said that you have not proved certainly that it did not occur by accident. There never was a case of burning where the proof was certain that it did not take place by accident.

The crime of arson is peculiar in this respect, there is always a bare possibility that it may be accidental. But I ask you, was this fire not as unlikely to have occurred by accident as if the building had been uninhabited. There was nothing there but the head of the elevators in a hopper, and to suppose that it could fire the cupola is an utter absurdity.

My next proposition is that Gay burnt it.

Speaking of Phelps as a man who is involved to a deep extent in this trial, I have to say that one of two things is true: he is either the most execrable villain that ever has appeared in modern times, either the vilest and the most abandoned wretch that Providence has ever permitted to pollute the earth, he is all and more than all counsel have declared him, or he is the most deeply wronged man upon the face of the earth. If he has deceived us there is no penalty too heavy for his crime: he has imposed upon the court, the community and his employers.

Death would be a mitigated penalty for such an act, if guilty no human law could find an adequate punishment for his offense, if for any sinister motive whatever he has plotted the ruin of thirty or forty individuals. If he has woven his snares of falsehood and perjury around them, the plot has no parallel in history since the days of Titus Oates and the Popish plot in England. If he has done this he is the most miraculous man of whom history has published any account. Possessed of ingenuity and skill the most consumnate and unparalleled.

If this is deception, he has not only deceived me, (that many a man might do), but much wiser men than myself. The agent of the Central Railroad, Mr. Brooks, who is reputed to be possessed of at least ordinary sagacity, and the four or five able counsel who stand beside me are equally deceived. For none of us could have thought it consistent with our duty or our interests even to have commenced these proceedings upon doubtful testimony, or even that which we conceived to be doubtful.

You must see that we all have fully believed it, or we had not dared to commence these proceedings. That Mr. Brooks believed it, that we all believe it, you must readily perceive. For it would be too absurd for belief to suppose that we would prosecute these men upon a mere fabrication.

His story, they say, is mere falsehood and deception. Such an unparalelled villain would be a worthy and desirable auxiliary to the devil himself! He stands before you, gentlemen, as a witness load-

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ed with every epithet of abuse showered upon his head, looked down frowned at, scowled at, howled at, stamped on, thrust down, bellowed at—yet still he lives and stands before you, and it is for you to examine his testimony.

I shall endeavor to drag him from the mire into which he has been thrust, and see if any proportions or features of humanity can be discovered in him. In all my experience I have never seen a man so treated. If he had been as guilty as he has been represented, then is the penalty well nigh paid by what he has been subject to in this prosecution. Death by slow torture, by crucifixion, by fire, the sharpest torments, would be pleasure compared with what he has suffered. For a man to set here and have publicly showered upon his head every curse and epithet, and charged with every species of infamy, without the power to reply—is a doom from which humanity shrinks. It is wonderful that the man is alive. It seemed to me that he must cease to exist. If the counsel who opened for the defence had had the look of a Gorgen or the eye of the Basilisk, he would have been turned into stone or perished before his gaze—that look had every element of hell and malice concentrated in it. If he had the power he would have annihilated him. That he thought he was the wretch he painted him, it will do us no harm to admit; that he thought he should prove it, I have no doubt. But has he done it? They have pursued him with an industry that is most praiseworthy. They have endeavored to impeach him by showing contrary statements of his own elsewhere, they sought to lead or drive him into contradictions. Next to impeach his general character for truth, and they followed it up with the utmost perseverance. They said he had been to State Prison, that we must admit; but you must recollect he went from Jackson Co., and that it has been testified by every witness that there was a great question in the minds of the community whether he was guilty or not. But admit that he ought to have gone, that he did go to State Prison, and was pardoned out, as the fact is, when the question of the impeachment of this witness arose, we threw the door wide open, we did not confine the counsel to such questions as the law allows, had we done so, they could not have sworn ten witnesses. I have the utmost confidence in his credibility, and had no objection that every single act of his life should be fully and fairly brought before you, and it would gratify me if every thought and impulse of his heart, from childhood to the present hour, could be brought and spread out before you. If his tale be worthless and false, I have no desire to induce you to believe it, and to test his credibility we allowed them to follow him through every part of his life, trace him from childhood to parade before you the misfortunes with which Providence has afflicted him—not alone what was true, but what was false; through every labarynth of life they hunted him. There is a class of men to whom this human hunt is pastime, unfortunately a large class, to whom this is a most exciting game. There is a kind of ferocity in human nature, a sort of blood-thirstiness, which prevails in mankind, there are a class of men who are too conscious

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of weakness to attack the vigorous and strong; but no sooner is a man down than they will fall upon, and tear him, a sort of carrion birds and human vultures—too cowardly to prey upon the living, but they will descend into the grave, drag out the carcass from its mouldering cerements and feed upon its festering remains. Let a man be unfortunate, let him be down, and this class of vermin hasten to their natural repast. They scent their prey with the same certainty that the beast of prey does, these human hounds have been after this man in full cry for the last three months.

I have seen them here with their gloating countenances as they fastened them upon him with the malignity of fiends, and when he quivered in every fibre from the torture inflicted by their serpent tongues, you have seen the smile of gratification upon their lips. That is the spirit in which these men have hunted him. Still he is alive and beset around by enemies as he has been. Everything that could tend to degrade, dishearten and discourage him showered upon his head, yet he is alive and he has hopes, fears, human feelings like the rest of us, he can still suffer and enjoy. Human ties and sympathies still surround him, he has a wife, children, they have shared likewise in his bitterness of spirit.

Nor is this trial to be the end of his misfortunes. In your presence he has been forewarned that he has awakened the vengance of those who will never leave his track until he leaves the earth. So be it. They may hunt him again to the prison, from which he has just emerged, they may murder him, as every thing in this case shows they would gladly do. But after all, the facts which he has related and your verdict upon them will not perish with him.

Mr. Lake is another witness, and they tried to attack him. He went to prison; by the rule of law it is not imprisonment but the crime that disgraces the man, and that is the rule of reason.

Mr. Lake was a young man. A friend of his went to jail and was likely to be punished, he caused to be handed to him a file or instrument by which to escape from jail, no more or less. I am not going to discuss its effect upon your mind whether this indicates a degree of depravity, disqualifying him for telling the truth. From that time his conduct has been regular. The question is, does the handing of that file disqualify him for the rest of his life for telling the truth.

The testimony of these men embrace a multitude of particulars, extending over four or five months of time, and I ask you if human ingenuity could devise such a story, so perfect that it could not be shaken by the severest cross examination. I have made the same remark with regard to Wescott; the most searching and protruded cross examination I think I ever witnessed failed to shake their testimony.

I have this general remark to make, if you believe their testimony and give them credit, it is an end of this case. It would not have become necessary if their story received perfect credence to have investigated other facts as thoroughly as we have. I could then have taken up their testimony and asked your verdict, without the long list of

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witnesses who have given evidence as to the depredations on the rail road. It may be asked, why, if I so relied upon their credibility, we did not rest upon their evidence alone ? I will tell you, with all frankness, they had both been in States Prison; and although I had never doubted their credibility, and found them faithful and true, strictly true, yet I was aware that you had not the same means of judging their credibility that I possessed, and I thought it necessary to fortify the statement of those witnesses, by showing the strong probability of their truthfulness, by coroborating circumstances. This was the reason, and the only reeason, that induced the plaintiffs to enter into the history of the long catalogue of crime that we have been so long investigating, to establish the probability of the truth of the statements of Phelps and Lake.

SATURDAY MORNING, Sept. 6.

Gentlemen of the Jury : I had proceeded in my discussion of this case to that portion of the evidence that preceded the burning of the depot in this city. The proposition I was endeavoring to prove when the court adjourned, was, that George Washington Gay was the person who burned it. In the course which I have adopted in this argument, I now beg your attention solely to this question, to confine your minds to this and this alone. I do not at present inquire whether he was hired, or if so, who hired him; I inquire what is the evidence to establish the fact that he burnt it, and I ask you to exclude every other inquiry from your minds, that you should direct your attention to the single question—whether Gay burnt it or not? The argument that I have used, the disposition of the defendants and the probability of their being instrumental, has nothing to do at present, as far as this question is concerned.

The question is now, was Gay the person who committed the crime with his own hands? We have been warned by counsel that the fact of Gay's instrumentality in burning the depot rests upon the evidence of P. and Lake. A glance at the evidence will enable you to see that there is much more reliable evidence than the un supported statements of any one man to establish the fact. That it was burned by one incendiary, I have heretofore argued; what is the proof against Gay? We have in the commencement that kind of evidence which, both in law and reason, is the most conclusive against any one accused of such a crime, short of testimony of an actual eye-witness of the fact.

What have we then to implicate him? Some doubtful expression of his—something that may be construed one way or the other—a conversation partly heard, perhaps partly remembered and the rest forgotten? It is said that admissions are the worst kind of evidence; This must be taken with a qualification. The reason why admissions are to be received with caution, is: witnesses maybe mistaken in the meaning of the men who made them. The recollection of the witness may be imperfect; he may have heard a part, not enough to obtain the full meaning of the person; a subsequent portion may have qualified the preceding, may have shown that it related to a

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difierent subject; but I submit and this court will instruct you that, when an admission is clearly and distinctly proved, when it was deliberately made, not only is it admissible, but in point of fact it is most conclusive kind of evidence, as it excludes every objection against this kind of evidence generally, and particularly where admissions are made against a man's own character and conduct; still more, if it seems to have been made under circumstances which lead you to know that the man was expressing the exact truth of the matter. This is the kind of evidence I wish to submit; it is not the testimony of Phelps and Lake, but of a different man against whom, for the ten years he has resided in the State, there has never been a single word uttered imputing to him an act of dishonor—I mean, *Darius Clark*—a man of most blameless life, a man whose kind and obliging disposition and urbane manner has conciliated the good will of all who know him—a man who has not an enemy upon the face of the earth, except made in the course of this tria', in the firm and faithful discharge of a most holy duty—a man who stands as fair as any man in the limits of your State, and a man who will never be attacked except for sinister purposes. I have watched his course in prosperity and adversity, I have, throughout the vicissitudes of a life in Michigan, known him well and intimately, and say fearlessly that a more high-minded, honorable man has never taken up a residence in Michigan. Well and wisely did the agents of the railroad select, when they employed him to protect their best and dearest interests—when they enlisted him in an enterprise both important to them and the public—and well has he performed that duty.

He has fully justified the confidence reposed in him and sustained the high opinion which the public previously entertained. Many of you have known him, and it will take a legion of such men as those called by the defendants, to cast the slightest shade upon his fair name. His own fellow-citizens have elected him to posts of trust and honor, and such a post he holds now, which is a better commentary than anything I can utter in his behalf, if anything were required. If there is a man who deserves the public gratitude, by sleepless nights, personal risks and hazards, he is the man, and it will be worse and more than vain and useless for counsel here, upon mere assertion or any other foundation they can erect, to assail him.

Upon the word of this gentleman, I allege that Gay admitted that he was the author of the conflagration, not doubtfully, not in terms that might be construed one way or the other, but repeatedly, deliberately and distinctly, he admitted it. I need not read his testimony, it is unnecessary, you remember it—he told Mr. Clark upon two different and seperate occasions that he burnt it. Now do you believe it; was he the man likely to do it? Could Gay from all you knew of his character be hired to do such an act?

The counsel upon the other side will not deny that he lived in this city—that he was engaged in a course of vice and infamy that should render him the most likely person, that he had ingenuity and the skill to do it, all the evidence strongly shows.

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Take the scenes that occurred at his house, upon the testimony of Clark. I will not press my own testimony which I gave merely to relieve the delicacy of my friend Mr. Clark, knowing the same facts, having enlisted in the same cause, I would not shrink from his side, I had a feeling that it would hardly be fair to state what I knew—whether that feeling was right or wrong I will leave the honorable minded men to say whether the facts I gained a knowledge of, without intending to swear to them—facts which I dared not trust to others, to ascertain, whether swearing to facts thus obtained for the purpose of relieving the delicacy of Mr. Clark was right or wrong, I have no hesitation in submitting to any right minded man to decide. Upon your judgement of the propriety of my conduct in this instance, I am entirely willing to stake whatever reputation I may possess.

For this I have been attacked in a set speech of half an hour's length in your hearing, by the Hon. Senator from New York I heard it in silence—I shall doubtless hear it again; and so likewise an honorable man, one of your number has been compelled to listen in silence to an attack upon his reputation, touching him in the nicest point of his honor.

He has been plainly told that he had perjured himself by a wanton violation of his duty as a juror, that he had violated the most sacred duty that man owes to society, for if there is a place that should be sacred it is the tribunal of justice.

Yes, and the juror has been told that he had been guilty of a crime compared to which larceny and robbery would be an honor to a man.

I do not overstate the words the counsel used, he said he could prove it—he said that the juror had listened out of court to a discussion upon the merits of the case, and I appeal to that Juror if every word he stated on the subject was not utterly false. I will not permit myself to believe that a man raised so high in rank and station, and in the confidence of his countrymen, would state what he knew or believed to be false.

I am bound out of the respect I feel for the judgment and intelligence of the freemen of my native state, whose confidence that gentleman seems to have enjoyed, to believe that he would not be guilty of intentional injustice, much less falsehood. Yet the statement which that gentleman has deliberately made here, is to the full extent of all he has said and insinuated most utterly false.

I can well believe that the counsel has received such information from the men who surround him. The counsel has said he could prove it. The juror to whom I allude would be able to appreciate the evidence by which it should be proved. Still the counsel is doubtless right, he can prove it, and if circumstances should render it advisable he will prove it.

It would be rashness after the experience we have had of the skill and resources of these defendants, to doubt for a moment that they could prove anything they wish. They can impeach the honor of a juror with the same facility with which (according to their own boast) they could impeach the veracity of the best man in Jackson County. Can it be doubted that the man who could buy the power of

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perjury, transform a harmless buggy into a blacksmith's shop and the horse that drew it into a walking chandelier, ean as readily and by the same power transform an honest man into a villain.

I wish the gentleman to understand me, I don't for a moment question that he can prove all he has alleged against that juror, I merely inform him that it is utterly false—not a whit the less likely to be proved on that account; however it is admitted, conceded, they can prove a horse to be a blacksmith's shop, and every hair a candle, and what perjury can achieve they can perform. But the gentleman says he makes no personal issues. There are two kinds of men with whom it is useless to make personal issues, the one whose character is so bad that it cannot be made worse, the other so good that it cannot be made better, or injured. If the fulsome adulation of partizan editors, and the interested flattery of partizan friends have so inflated the vanity of the opposite counsel that he fancies himself above the just censure of the meanest citizen, he is mistaken; no rank or position in this country can screen any man from the just censure due to wrong and injustice, right even handed justice to all even the meanest—equal rights, fair play, are the jewels dearest to the heart of every true minded man.

I fear not to submit myself to your scrutiny, if right I am sustained by your opinion and can well dispense with that gentleman's approbation; if wrong I am willing to submit to your censure, it lays not in the power of him or any man materially to affect the fortunes of another. From the beggar that sits on your steps to crave charity, up to the height of the senator who has so pompously addressed you, by our conduct we stand or fal. You may know this juror and for myself my life has been spent within six hours ride of your city, and I shall be most happy if the counsel who has traduced me could speak to them who know me best upon the subject. He might learn the history of my life, a few years spent in "giving cheap counsel to some farmers in moderate circumstances," as he expressed it, that may be all that he can learn.

I stand not upon such a lofty eminence as that from which he has seenfit to attack me; he has the advantage and he has the disposition to use it, but whether the impregnable intrenchments with which his name and reputation are surrounded is equal to the courage he has displayed in an attackupon an humble juror, and a still more humble individual like myself you must be the best judge. What object the gentleman proposed to accomplish by this unjust and wanton attack on one of your numer I am a little at a loss to discover.

That it could have been intended to frighten or intimidate him into an acquittal of these defendants by the threat of grave accusations in case he should pursue any other course must not be supposed. Such an artifice would ill become the dignity and candor we always hope to observe in men of elevated station. But if this were the motive, as I cannot for a moment believe, I suspect, nay, I feel assured it was ill advised. Without any knowledge of that juror except what I gather from his personal appearance and the place of his nativity, I venture to predict that whatever the opposite

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counsel or any other man may effect by argument or persuasion with him whenever he or they shall attempt coercion or intimidation their success will be moderate.

Gentlemen, it is barely possible some of you may know this jury man. If so you will perhaps from your knowledge of his past life be able to judge of the justice of this accusation and of the value of that evidence by which the counsel here propose to convict him of flagrant misconduct.

But upon the truth of the statement of Mr. Clark much rests. If Clark tells the truth, to say nothing of myself, then Gay did fully, fairly, and distinctly admit that he burnt the depot. He did not explain particularly the manner in which he did it, and that is not the present question. He did it in some way or other; no matter how.

We must now consider the testimony of Mr. Hawley. The counsel have assumed one thing at one time, and another at another time. At one time they would show that the depot was fired by Phelps. What was the force of Hawley's evidence, but to prove that Phelps and Lake burnt the depot? else why should they seek to show that he had threatened to do so. Why should they seek to charge Phelps and Lake with concocting a scheme, while in prison, for burning property after they escaped, and charging it upon others for the purpose of making their fortunes, unless it was to raise the inference that they burned the depot? But they offered the proof and we are bound to consider it. They imported Hawley and Dyer from the State of Indiana, one of whom stole away from the jurisdiction of this court, without a cross-examination, when he found we had four men to head him, and the other had *explained* his evidence before you. These men were imported at the expense of the people of Michigan. This is the kind of *oppression* that has been exercised in this case, that has been so much complained of. The law has provided for the expenses of the scoundrels who were imported to swear false for this defence.

But they evidently sought to prove that Phelps and Lake burnt the depot. Subsequently they started another theory, and it immediately in this connection, that Mr Howard had the charity to admit that Clark spoke the truth. I do not ask him to stand to it; it would be inconsistent, for there is not a proposition that they have adhere to. First they said Phelps burnt the depot; then denied it. They attempted to prove there was a conspiracy between Phelps and Lake, and for two weeks their favorite Jack Adams was here for that purpose, but they never dared to call him. Now they will say they never intended to prove such a thing.

Mr. Frink—Jack Adams is not on trial.

Mr. Van Arman—We prove that Gay admitted that he burnt it, and by that kind of evidence that cannot be construed in any other sense than the way he stated it. He explained with some particularity to Phelps and Lake how he did it, but to Mr. Clark he explained neither the manner nor the instrument; but he distinctly swears to you that Gay said he was hired to do it, hired by persons

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living near Michigan Centre and Leoni; he used the names of Fitch and Filley, as being the friends there who had hired him to do it. This stands upon the testimony of Mr. Clark. How can this be explained? By the theory that Phelps and Lake and Gay were in a plot? Have they proved it? It is a distinct matter of defence for them to establish. We cannot be called on to prove that it was not so. This is a logical impossibility.

They allege something of their own, new and distinct matter—that Gay, Phelps, and Lake were in a plot, that they had conspired together to destroy the property of the railroad. You have their word for it, and that is all you have. We prove distinctly what is necessary for our purpose. They say in reply that there was a conspiracy for the purpose of convicting these men of a crime of which they were not guilty. I know of no principle of law that will allow you to take the word of counsel as proof of any proposition, for which you have nothing but his word. No other explanation can be given of the conduct of Gay. It cannot be reconciled with any theory that human ingenuity can invent, except the theory that what he stated was simply true; and they have not attempted to offer any proof to the contrary. We prove that Gay admitted he burnt the building, and how he did it? He related it—boasted of it—and they have offered no earthly proof in contradiciion or explanation of it. Their defence to this stands before you a bare, bald assertion of counsel, with no proof to sustain it.

It will be time enough when they support it by proof, to discuss the merits of that proof. I need not explain to you how and why Phelps became so readily acquainted with Gay. Having been to Indiana, and learnt the names of his associates there, and being in the secrets of a man with whom Gay was intimate? pretending to be laboring in the same cause, he easily and naturally gained his confidence. Confidence is as commonly reposed between rogues as between honest men; indeed, a strong, firm, and permanent bond often exists among this class of men. They readily give confidence to those who come properly introduced with the insignia of villainy upon them, and this is the reason why Phelps so readily gained the confidence of Gay. *He had been in State Prison*, and this was a passport to the confidence of Gay.

It is strange that we have not other testimony—another importation from Indiana; they might have proved this conspiracy, and if I could go beyond this record I could show you that they did attempt to have it, and from the same infamous source.

I am endeavoring to establish the fact that Gay burnt the depot, and if you believe the testimony of Clark, does it not establish the fact. I do not alude to the instrument (the match) found upon his premises—the defendants say that Phelps put it there. It would not detract from the force of Gay's admission if Phelps did so. Suppose that you do believe that Phelps and Lake constructed the match and put it there, still Gay has repeatedly admitted that he burnt the building.

If Mr. Phelps, for the purpose of securing his conviction, made these

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machines, would it detract from the force of Gay's admission? The circumstances all show that he made this admission in good faith, knowing it to be true. But from all the evidence can the counsel point out a single motive that would induce Phelps and Lake to manufacture and deposit that match there. But have we no other evidence? At the time he said he burnt the depot he also said he had the tools in his house to do it again—he did not show them to us there—did not say that they were. To obtain an opportunity for us to see them, Phelps requested a sight of them, upon the pretence that he wanted to obtain one for a similar purpose. He tells you where Gay carried the match, and it was in the same place where we afterwards saw it. It is not in proof that the instruments produced was the one that we saw that night, Phelps does not swear that it is, Clark thinks it is not. I believe that it is not the same, unless it is much altered; it is not the match that was shown to us that night.

Now is this no evidence; does it not tend strongly to coroborate Phelps's statements? He had previously told us that at Gay's house there were instruments for the purpose of burning up the depots of the company. We were extremely anxious that no man should deceive us—we did not dare to send any other person there.

Phelps had gained his confidence and said that he would procure us the evidence of our own eyes if we would adopt the course of conduct he thought fit to direct: that we could go as associates of his. We went there doubtingly, and found his representations true. I ask you if it is possible that when Gay tells us in his house, that he has the tools, when he exhibits the match, that we could longer doubt, that we should suspect Phelps was deceiving us.

We found it in Gay's house in a bed room, a place where it could not have remained an hour without exposure. Phelps and Lake went with us, but carried nothing with them; they had come with us to Detroit; except the night before when we went together, they had not been there for a week. Neither time did they carry anything to the house with them. We knew therefore that they had not carried the match to Gay's.

And again what was the language of Gay? that he had the "tools." What tools? Was this to deceive us? If so, the defendants might have given some explanation, at least in theory of his motive. Gay says he had the tools again to burn the depot. We had to proceed cautiously, we dared make no inquiries that would excite suspicion, or show curiosity as to the manner in which he burnt the building. We could not urge him to exhibit the tools; he might be a little unwilling to show them to us. We availed ourselves of the opportunity to gain what knowledge we could, in the best way we could. Take the testimony not only of Phelps and Lake, but that of Clark, and see whether counsel for defendants have furnished any explanation. I say the building was burned by an incendiary—that this man admitted that he had done it and that he had the tools to do it again. There is no answer to this—they have offered no proof that either contradicts or explains this evidence.

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Now, I say these men hired him to do it, some or all. I will not now enumerate but some or all hired him to do it.

First did they know Gay at the time? Fitch at all events did—is it no proof that Gay could pronounce their names?—that Mount was for years in partnership with Gay in deeds of villany—that Mount was now associated with Fitch and the defendants. It was most natural and probable that by the means of Mount they should become acquainted.

Gay mentions the names of Mount, Fitch and Filley—how should he know their names, their history, their occupations, and they not know him. But take the testimony of Phelps as to an occurrence in this city at the time when Fitch was trying to persuade Phelps to burn the depot at Niles; an allusion to Gay was made and it was testified to in substance by another witness.

Phelps tells you of a singular interview between himself and Fitch after he returned from Royal Oak. He did not know that a person on the earth could confirm his statements, and he tells you that when he (Phelps) came back, Fitch met him near Johnson's and affected a strangeness of manner towards him. Said to him, "Are you here yet?" Then asked him about his family, and in the end of the interview told him "you will find the fish round the corner there."

Phelps tells you that Fitch had agreed to show Gay to him the next occasion; that he could tell him where he could find him, and that he did understand the fish to mean Gay.

He went round the corner and found Gay. Mr. Sheeley could not know what was meant—but he heard the remarks and he describes the man and the interview.

You can have no doubt that it was the same occasion. Now take this in connexion with Phelp's previous statements, and can you doubt that the relation he gives is correct?

Here is a material point, fully coroborated.

But we have further evidence aside from that of Phelps and Lake, arising from an incident which occurred after the arrest of the prisoners, sworn to by Dr. Hahn.

Fitch wanted to see the warrant, he read it so intently that for a moment his mind became abstracted from external objects. He knew his guilt and contemplated his danger; he well knew the consequences, which threatened him when he came to that part of the warrant which charges him with conspiracy with Gay, to burn the depot in Detroit, he stopped, his countenance fell, and after a pause he said to me, I believe that old Gay has turned State's evidence.

In the complaint of Phelps there recited, what was there that should have led him to think of Gay's turning State's evidence, except he had been guilty.

Is Mr. Hahn mistaken as he heard the remark? He is positive, for he was told to note it down at the time—he is not mistaken about the name. And I ask you if there could be any mistake about the remark. They may say that he said that Phelps had turned State's evidence.

Phelps was no older than himself, and old Phelps has never been

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uttered by mortal man, while old Gay was the name by which Gay was always designated.

Take the remark and consider its meaning, it came from a sudden conviction, without reflection. It come from the source of all truth, the honest impulse of nature; because it is in fits of abstraction—when the cunning is forgotten, from impulsive expressions that we are always sure to gather the truth. Why did he think that Gay had turned State's evidence? Yes, the crimes he had committed rushed through his mind, he saw in threatning perspective a fearful storm about to burst upon his head, and he thought he knew from whom the danger proceeded.

His mind dwelt upon all the occurrences of the past, and he could get no clue to explain his present arrest except that his accomplice had betrayed him. What could Gay betray if he did not know him? He likewise said he was a stranger to Phelps. Now, when a man who is accused of crime, tells a deliberate falsehood in relation to the accusation, he furnishes a proof of his guilt.

The innocent man has a plain, straight-forward path to pursue. Innocence is truthful, frank and honest. If Fitch was innocent how came he to deny his knowledge of Phelps? He took his cue from a rule, which practiced felons generally observe, and which is to deny everything. But a good principle may be carried too far. It would have been much more prudent to admit that he knew Phelps. Nothing is worse than a denial when it can be found to be false.

For ten or eleven years past he had been acquainted with Phelps; he knew him as early as 1840; was a witness upon his trial when he went to State Prison. He met him at the State Fair, and invited him to his house; in the cars at Detroit he had him by the hand most lovingly; at Dexter they sat in the cars for miles talking together; at the lobby in the House of Representatives, he moved his seat and sat with him an hour; at the bar-room at Filleys he scarcely spoke except to Phelps—and yet he did not know him.

Take other evidence, of Dr. Hahan, as to a conversation between young Filley and the Price boys: "If we could get hold of that Hank Phelps," says one of them, "we would make mince meat of him; he has betrayed us; he was visiting here all winter, pretending friendship, now he has turned round forfeiting the confidence that rogues place in one another, and told the whole thing, if we could get him in our hands we would make mince meat of him."

The plain English, in spite of sophistry, is, Mr. Phelps had some knowledge of facts, which he had obtained by visiting and pretending friendship, and has communicated that knowledge. It implies that what he has betrayed is true: he had there learned facts and betrayed them, it can bear no other construction.

Mr. Seward would beg leave to correct the counsel: the words were, He has been round all winter, and has now come out and exposed all he knew—the whole matter.

Mr. Van Arman—If I am mistaken in the language, I am happy to be corrected. I will read the printed account as I have it. It reads thus: "He has turned traitor and exposed the whole matter."

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The force and effect of these admissions can never be explained away. These men were under arrest and evidently talking about the subject of their arrest, the charge upon which they were arrested, with Mr. Fitch, their leader, their minds dwelling deeply and naturally upon that very charge when they made these remarks. What whole matter? Nothing less than that stated in the complaint, had Phelps learned and exposed. They only accused Phelps of treachery, and treachery implies confidence. There was no reference to any other subject or matter than the warrants. What stronger proof could be obtained than such a remark as this? Suppose Mr. Phelps had gone to arrest them, that he had been requested to read the warrant, and having looked at it they say, you are a traitor! you have betrayed us! you have told the whole matter! Would there be any doubt about the meaning of this language? Now I ask you to note well this testimony, to give it its fair and legitimate weight in rendering your verdict upon the case.

Did these defendants hire Gay to burn the building? The defendants say that Phelps is a liar—that you will believe nothing he has said or reported. Take the admission of Gay that he had burnt it: take his familiar enumeration of the names of these defendants, their history and residences; consider that Mount was a natural means of communication between them and Gay.

Suppose again, that these persons desired to procure the depot in Detroit to be burned, whom would they be more likely to employ than Gay. They knew him to be qualified for just such a purpose: knew him of old, at least one of their number certainly did, he had been his partner for years in deeds of villany: they corresponded together, who would be more likely to be selected than Gay.

We have every reason to suppose that they became acquainted with Gay through Mount. But cast Phelps' testimony away for the present. We find that Gay said he burnt it, and that he was hired to do it by these defendants; and one of their number says that he believes old Gay has turned State's evidence. Others say that Phelps has exposed the whole matter, uttering the direst threats at the same time. How much, I ask, does this lack of convicting them.

But take the testimony of Phelps and Lake, and read it in connexion with the history of the crimes and depredations known to have been committed by these abandoned men. Look at their purposes of revenge and their malignant feelings shown by their own admissions. Take the testimony of Mr. Clark and John Faulkner and say whether you do not believe the testimony of Phelps and Lake. If you do they must be convicted; there is no room for argument, and if you lay aside their testimony they cannot, it seems to me, be acquitted.

Of the whole statements of Phelps and Lake, there is but the smallest portion that is not fully corroborated.

Phelps tells you from day to day what the defendants have admitted to them. And what does he report? Repeated boasts and admissions of what they had done. Their acts of agression we have proved by other witnesses. How could they learn what Westcott

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and others had communicated, they did not know Westcott till long afterwards.

Mr. Clark never named Westcott to them, they reported these facts in ignorance of what had been discovered. The various witnesses scattered over the line, unacquainted with each other, repeat the same acts of agression, and the same admissions; not the same testimony in every particular, but the same general identity of the sources of information is clearly shown.

But how far are they corroborated. The admission of Gay, the exhibition of the matches stands fully established. Another thing: what was the bond of union between Fitch and Phelps? They had matters of privacy, they stepped aside from the crowd. What was the topic of their discourse?

Fitch tells Doan that he has a friend coming on the cars; Doan sees him soon after talking with a stranger, and Westcott tells you who he is, it was Phelps. No other friend that he expected is shown to have arrived that night.

Mr. Fitch, it is said by the counsel, was a man of high standing in society, a gentleman of refined tastes and habits in his mode of living. What was the bond of union between these two men? Is there a single transaction of legitimate business that ever, as far as the testimony goes, passed between them?

Phelps a miserable culprit, a man that Fitch would not stop to take by the hand, if he is the man they represent him to be. Has this circumstance no weight upon your minds?

But I have now gone through with all my propositions, my strength will not enable me to rehearse all the testimony of the witnesses, it will be reserved for the counsel who will follow me. And now having gone through this case for the prosecution, it remains for me to say a few words about the defense.

In the first place let us examine the theory that has been presented to you. Let us examine it carefully. What is it? It is difficult to gather what it is. It has taken as many forms and hues as the rainbow, it is chameleon like in its shades.

One moment they say that Phelps perpetrated this crime, the next that they do not accuse him of it. Again that on the night of the eleventh of April, Corwin and others went to Filley's to play at nine pins. The next moment that they met to devise a plan to bass bogus money. Lastly they tell you that it is nobody's business what they went for, because every man has a right to go to a tavern, and they will stand to nothing. They have found that human ingenuity can never explain what happened on that night, except upon the theory we have presented.

They did not meet to play nine pins, for they did not play; they did not meet to arrange a plan for passing counterfeit money, for circumstances all disprove this design and no such plan was discussed; and it will be the duty ot the counsel for the defence to explain what they were there for. Their defense may be divided into two portions. First they attack the credibility of Phelps, whom they choose to consider the only witness.

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They tell us in substance that Phelps and Lake constructed these matches, and carried them to Filley's. They promised to bring dead, cold, inanimate matter, that could not lie—that would speak in tones of thunder to confound the wretchs and protect the innocent.

And they did bring here cold dead matter, and it was cold enough —almost rotten—and it was here ostentatiously paraded, but whether its thunder tones had the effect to confound these witnesses or themselves, you must judge.

A block of white wood they did bring here, as they promised they would; and could any body else have performed this feat—it could have been hewed from any cattle guard between here and Michigan Centre. And I wish them much joy of their discovery, they shall be for ever welcome to all that they can make of it; and if its tones are interpreted aright then this harmless block will proclaim the guilt of these defendants more unequivocally than any other fact in this case. I ask you if this same block of wood has not convinced you fully of the truth of Westcott's statement, that they boasted of their readiness to commit perjury,—that they could swear a wagon into a blacksmith's shop, and a horse into a chandelier. They are performing what they promised. It was perfectly natural to the minds of guilty men to conceive the plan of that block.

I beg leave to call your attention back to the history of this case. Is it true or false that these men were bound together for schemes of wickedness and crime, and had agreed to sustain themselves by perjury? Had the source of public justice in Jackson County been corrupted by these men? Is it true that they threatened the life of any man who would tell the truth against them, and that this mutual bond of infamy was made strong by their confidence in the power of corruption possessed by this association? If so, then I have the solemn admonition of the opposing counsel, that there is danger. And is it true? What is the proof? It came from the testimony of innumerable witnesses, that they invariably promised and agreed to stand by each other and swear each other clear. What says Brown —that they would stand by each other. What says Sherman—that they could impeach any man in the State. Westcott says the same thing; and Woliver and Wells give similar testimony.

And if these men were associated together for the purposes of crime, what is more probable—it is natural, inevitable; the bond of their union would be feeble without this clause. It was a necessary article in their treaty. Such a compact must be written in lies, falsehood and perjury; nothing less would protect them; and protection they fully intended. Now, when they were prosecuted, what could be expected? Perjury, as black as the foul source from which it emanated: we expected it, and we have not been disappointed.

Look at the history of this trial. Will any one of the counsel deny it? Let them bring back before you the infamous Hawley, who come here and confessed his own falsehood. Let them fetch back the fugitive from justice, who came here and testified; and when he found we had witnesses to convict him of perjury, fled, and his tes-

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timony was stricken out in your sight. What next? A man with the appearance of candor and honesty tells you that he saw two certain cattle guards at Reynold's crossing, entire, with the exception of one side; and yet five persons have told you that it was all false. He said he had never visited the spot but twice; he spoke with certainty. His attention, he says, was called to what he saw. He says that the first time he saw two cattle guards lying separately: he noticed them, because it was the first thing of the kind that he had seen. He tells you his errand there. He swears he is not mistaken. And yet, every word he uttered was a lie. A year ago last spring, in the month of May, there was a cattle guard put down upon the east side of the crossing: there was another cattle guard put down two years ago last June. Both these guards were in use and down. Nor was there any with the sides split in two, lying on the bank. What else? He tells you that three weeks only before he testified, he was passing with another man, and he saw the cattle guard lying there, with the exception of the other piece. His attention was called to the fact, by the other person calling his attention to it, and saying that he did not know what had become of it: it had probably been burned up for wood.

He tells you this with apparent sincerity: it was but three weeks ago. And yet a multitude of witnesses have told you that it was not so; that there never was a cattle guard with the sides split in two there at any time.

One was put down two years ago last spring: one a year ago last spring. And that is the beginning and end of all the cattle guards that were there. Yet, he says he was there—he knows the spot—it was there, not elsewhere. The fact is, as I have well ascertained, that he heard a report that there had been a broken cattle guard there and came here and sworeto it.

That there has been perjury committed, wicked and corrupt, the counsel for the defense will be under the disagreeable necessity of admitting.

The theory of the defense is, that Phelps and Lake manufactured these matches; and they proposed to bring in the very piece of wood from which they were made. Now, take this theory. They say that Phelps, when he left Sylvan, left concealed in the manger of an old stable, the very block from which the matches were made; that he made the matches; that he and Lake carried one part of the way to Michigan Centre; that Lake carried it the rest of the way on foot; and that they had got the very block out of which it was made; nay, the very augers with which he bored them.

Examine this theory. Whatever may be said of the wickedness and falsehood of Phelps, one thing must be, and has been conceded, and it will weigh much. Whether a man is shrewd, or foolish, or wicked, his conduct will but reflect his character.

If Phelps is wicked, he is not a fool. There is a wide difference between him and a weak or foolish man. If he has undertaken a scheme of villainy of this nature, he does not at least lack shrewdness and sagacity. And it will be impossible, if the counsel make

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him out a devil for ingenuity, to make him out at the same time an idiot. And yet, to reconcile their theory to common sense, he must be represented in both these characters.

Here is the difficulty: they must represent him at one time as a most sagacious man, a perfect miracle of cunning and villainy, and then deprive him of all these qualifications, and leave him a little better than a driveling idiot. For, in order to make me believe that he left the block of wood where he did, while contriving a scheme to convict these men, they must deprive him not only of honesty, but of every particle of common sense.

Wherefore would he leave it there for concealment! If the idea of concealment entered his mind, would he not have burnt it up?—Did he want the block for any further purpose? Did he want to go back there to make more matches? Would not a man of common sense have concealed it by burning it to ashes? But they say there was no fire in the house the last night he was there; and if there was, he might be seen. Were not the woods near, and could he not have burnt it in the night? And it was certainly the simplest and the easiest course he could have pursued, thus to have removed every trace of its existence.

But Mr. Phelps does more than that to destroy the last chance of concealment. He not only surrenders to a stranger the possession of the stable and premises with this damning proof of his guilt concealed, but he goes to a neighbor (Mr. Reynolds) and tells him, "you may take the hay in the stable—I do not want it." He says in effect, take the hay, and you will discover that which will send me to State's Prison, which will ruin me: take away the hay, and you will find the block.

The man who would thus have acted, must be an idiot; nothing short. A child two years of age would have known better. There is not a man possessing a particle of sense so stupid; and yet at the same time it is necessary to make Phelps a very cunning, shrewd man.

Well, take another part of this theory. After Phelps and Lake had manufactured this match, it became necessary to get it deposited in Filley's bar-room, and they wished to carry it there in such a manner that it would not be discovered. This was done, remember, to manufacture evidence against thirty innocent men. And they well knew that every movement they made, would be closely watched and thoroughly investigated. Mr. Clark, the faithful Railroad agent, had his eyes upon them. Others were carefully watching them. They were preparing the evidence to convict these men or themselves.—They anticipated all the events of this trial, and they would certainly desire to carry that box to Michigan Centre with the utmost secrecy. In fact the counsel admitted substantially that they wished to carry it secretly.

Now, if you wished to carry this box secretly from Sylvan to Michigan Centre, how would you do it? The night was made for rest and repose: it is a blessed institution. But it is used by dishonest men for a different purpose; for acts of secrecy and crime. It is the

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chosen period for rogues. When would they have carried this block? Undoubtedly in the night. A few nights before, they did drive to Filley's, in a buggy. If they had then taken the box, given it to Filley, and told him to keep it secret, he would have kept it; if an accomplice, of course he would say nothing.

But if circumstances had compelled them to take it in the day time, how would they then have taken it? Every motive would induce them to secrecy. They were going to take it in a buggy: and what would have been easier, than to conceal that small box in a buffalo robe; a bag, an old barrel; a dozen different ways would have ensured secrecy. If they had taken it in the day time, is it not certain that they would have done so?

But how do they say they did carry it—that they tied it up in a red handkerchief, put it in the hind end of the buggy—stopped at every house. One of them takes it in his arms and goes across a field and then follows the public highway for miles,—that is their theory, that is what these witnesses say who come from Leoni to swear on this subject, and this is the beginning and the end of this most villainous story—a story that would meet its denial from an idiot.

It seems to me that the counsel have mistaken their men when they tell you this—they should have recollected that you had seen some years of human life, and that you have some knowledge of the motives that influence human action. They seem to have taken it for granted, that what was once sworn to, ou would not for a moment question, however repugnant to common sense.

But they are not to blame. I expected that they would prove by at least a dozen men, that they saw Phelps and Lake manufacture the matches and put the matches in the box, and I am surprised that they have not done it.

Here is the theory. Phelps and Lake, with every motive to the most profound secrecy—with a punishment as dreadful as death itself impending over their heads if they are detected—place this evidence of their guilt in the hind end of the buggy, in open view—stop at every house, and finally to make discovery certain, carry it across an open field, in plain view for miles, in the public street and then knowing as they must, that numbers of persons saw it come here and on their oathes deny it. What next? meanwhile Lake gets to Filleys, he sets this box on the floor in the bar room, waits there four hours until Filley and another man arrives. He says how do you do Filley? how do you do Lake? Lake says Filley, will you take care of this box? Filley puts it in a little room, and then they go afishing, and it is a fish story, a most remarkable fish story, and that is the theory which the ingenuity of these villains has been occupied in inventing for the last three or four months.

If this evidence is false, and that it is so, is as clear as the sun at noon day, then it is hard to say what portion of this testimony is worthy of credit?

Mr. Peeler, from Mackinaw, is the first witness; he is a man of some pretentions, and he gives you the history of his life—that he

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has been a soldier—he has served his country of course and he has seen some peculiar service. He has witnessed a good many unusual sights and scenes, among others the rogue's march, and the interior of guard rooms, and jails are familiar to him, and he is about as good a soldier as citizen. Having served his country on fields of carnage, he was taken with a sudden panic in time of profound peace, and deserted his colors, he was brought back and honourably discharged by court martial, and his last military manouvre was a masterly retreat from our northern frontiers executed to the tune of the rogue's march. He has been peculiary unfortunate ; a very honest man doubtless—but he seems never to have been duly appreciated. He seems to have been suspected in this city, so strongly suspected that the officers of the law were unusually attentive to him. He has explored the interior of your jail. There are some other peculiarities in his history—he has tasted the sweets of conjugal life and thinking that he could not have too much of a good thing he takes two or three at a time.

The rites and ceremonies usually observed on assuming this interesting relation, are matter of indifference to him, he is after the essentials, and whether priest or soldier officiate at the altar, is immaterial. A soldier's wedding suits his military taste and profession best. So oblivious is his memory of unimportant circumstances, that he not only fails utterly to recall the time, place and circumstances of his numerous marriages, but he has most ungratefully forgotten the very names of his numerous wives, including that of the present Mrs. Peeler. The names and number of his children, even, he is unable to recall, and of his numerous acquaintances at Mackinaw and in this city, where he resided three years, what can he tell you ? Their very names, like those of his numerous wives and children, have faded from his memory. So with the whole history of his useful life—link after link in the chain of events corroded by the tooth of time, have dropped silently out.

It is sincerely to be hoped that his country will not be equally forgetful. One eventful and important day, one striking and important event, however, dwells brightly and distinctly in the memory of this witness—and that day is the memoriable 11th of April, that striking event was the meeting of a couple of men on the highway, six months ago, in a buggy, with a bundle, tied up in a handkerchief, lying in the bottom of it. This day, this remarkable event, he can never forget.

And I would ask you if, under the circumstances, as related by this witness, meeting with a man on the road, any other person than this Mr. Peeler would be apt to notice the fact at all, a bundle in the hind part of a buggy, while he was travelling the other way. Out of five hundred buggies that he has met, could he say what any other one contained ? Would you remember that you saw a man on the highway, even if he had an ordinary looking bundle under his arm ? There would be nothing peculiar to fix your attention, it would make no impression upon your mind, and you can thus jndge of the possibility of this testimony. They were passing—and they saw some-

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thing remarkable and mysterious, it startled them—it alarmed them, they were afraid crime was about to be committed, they thought it must be a box of bogus money! What else could you expect from a red handkerchief, if not that it must be an instrument of music? This supposition was just as likely as the other, for of all the instruments of music that I have seen, from the deep toned organ to a three-penny jews harp, I never saw anything in the shape of this box!

Is the shape of that box, thus tied up, so curious, so strange, as to excite remark from those two men? It is not probable. And I will now see whether the other testimony, in relation to this matter, is any more worthy of consideration.

Mr. Cady tells you that he knows nothing about it. I take him to be an honest man; and if he had said that he had seen it, I should have believed him. But does he say so? He thinks that he saw something; but whether it was a bundle or a bag or a box—whether it was long or short, he has no distant idea. His testimony is altogether too uncertain to justify any reliance upon it.

I cannot follow this buggy in its various windings and turnings. If Phelps and Lake took this journey, hoping that it would be secret, never were two men so thoroughly disappointed. For, never since Michigan received its first white inhabitant, has a journey been so noted and observed. It is ordinarily very difficult to prove that upon a given day a man made such a jouruey: the proof of it would ordinarily be difficult to obtain. In this case, it has been different. For never, since the flight of Mahomet, has a journey been so much remarked. The whole population have sprung up and sworn to the most minute particulars. They have rather overdone this part of their defense. For there is such a thing as overdoing the matter. It would probably have been safer if it had been proved by fewer persons. See what occurs at the entrance into the Beeman field. At every turn, witnesses spring up like the clansmen of Roderick Dhu, and confront Lake and Phelps, their demeanor, every thing about them. And strange to say, while they were all looking for something else, they found nothing but these men.

Mr. Beeman was in despair for his lost son. He had gone, and he knew not whither; and he was crossing the field in search of his lost child. He was searching for what was plain in sight when he started. He could not find the boy, but he could see Phelps and Lake.

Is the story true? can it be true that the old man sent the boy to watch cattle—waited until he became concerned about him, and then started to find him and reached to a point more distant from the place of starting, before the boy reached his point of observation. The boy says when he got to the summit of the hill the buggy stopped. The old man waited until he became concerned, then started; he had further to go, and just as he got in a line with the boy the buggy stopped, both saw the same thing at the same time.

There is another peculiarity, perhaps it is explainable, but it looks a little singular, he saw these men in the buggy and about ten min-

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utes after a man came from the west road with a load of rails; the buggy was going fast, the rails slow, and miraculous to relate before they had gone twenty rods the rails passed the buggy, going the slowest; however, all the while. The old gentleman thought at the time that this was a curious phenomenon and therefore noticed it particularly and has related it minutely. There was a peculiarity in his mode of computing distances as well as in his vision.

But I will not dwell longer upon his testimony, you have examined the field, and you can judge if he could see what he pretends.

I shall leave to other counsel to comment upon the remainder of this testimony. I have exhausted my strength and as I fear your patience. I shall leave the case in your hands—it is a weighty responsibility, but I know that you will discharge your duty with candor, with scrupulous honesty, with the best faculties which God may give you. I doubt not I have the happiness to address men upon whose minds public clamour will fall dead and powerless. I have no doubt that you will discharge this great and weighty duty to your country, firmly and honestly, and that you are fully impressed with the necessity of maintaining those laws which have so long protected you, and which have surrounded you with blessings innumerable.

Does any man lack motives to stimulate his loyalty and hearty allegiance to these laws and institutions? Let him consider their beneficent and glorious results, manifested in the present unequaled prosperity of our state and country. Let him trace the rapid advance of her hardy and enterprising population across this vast continent, carrying in successive waves its tide of daring emigrants far beyond her receding frontier of the primeval forest; marking out from its vast interior, state after state, and annexing them to the area of freedom. Over the wide plains of the far west, over the flinty summits of the rocky mountains, and through the gorges of the Sierra Nevada, now rush the tides of her vast emigration. Her progress is unrivalled in the history of the world.

A little more than half a century ago, this great republic consisted only of a few feeble, sparsely populated colonies, bordering the sea coast and the large rivers of the east: destitute of wealth, of commerce: her rights often trampled on: her flag feebly supported, only by a handful of brave men. Within half a century that flag has been borne in triumph from the Gulf of St. Lawrence to the Rio Grande, from the Atlantic even to the distant shores of the mighty Pacific. Its folds are now swept by the rude gusts that blow along the rock-bound coast of New England, and fanned by the gentle breezes that float over the golden sands of the Sacramento Valley.

The industry and enterprise of her sons have encountered and subdued every obstacle to their advancement. They have mined their way through the flinty barriers of rock. The mountain gorge and the deep morass have been leveled: her iron tracks and her artificial rivers now span the continent. "While through every vein of her vast empire flows in strengthening tides, *trade*, the calm health of nations."

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What is the source and secret of her prosperity and greatness?—Has it been achieved by the valor of her arms? No. It has been the work of peace, not of war. The glorious achievement of labor, protected and fostered by wholesome laws and institutions; those institutions sustained and supported by the unwavering loyalty of her citizens. To that loyalty alone do we owe the stability of our institutions, and the prosperity they have bestowed. Upon that alone, can the government rely for the execution of her wholesome laws. To that alone can society and individuals look for protection from crime and aggression. To this best virtue of the good citizen, I confidently appeal on this occasion for the vindication of the laws of our State, for protection to the property and lives of its citizens.

MR. FRINK.

May it please the Court—

Gentlemen of the Jury: The occasion that has required your own business pursuits to yield to this call of the public, that you might aid in administering the laws of your State, is one that you may well hope shall not again occur. The duty that you were called upon to fulfil with fidelity, to that society and that government to which you owe allegiance, and, at the same time, to thirty-seven of your fellow-citizens, who leaned upon your integrity and judgment for the protection of the highest rights of citizenship, was one of fearful responsibility. A jury was never before empanelled under such circumstances as you were. Over forty men, living in a distant part of this State, were arrested and brought to this city, among strangers, to whom they were unknown, and committed to jail, not, as they supposed, to await an examination, in which they would be confronted by their accusers, and learn the details of their offence, but, contrary to all precedent, the laws were suspended, and after their imprisonment, a Grand Jury was ordered specially to receive the evidence against them. It was done in the midst of the most intense excitement that ever maddened any community. The daily and weekly newspapers of this city were filled with successive charges of flagitious crimes. The maxim that every man is presumed innocent until proved guilty, was forgotten. Their accusation and arrest was deemed conclusive of their guilt. It was regarded as a dereliction of duty and morality for counsel to undertake their defence. They were brought within a foreign jurisdiction to be tried by strangers. Although it was alledged that they were privy to a crime that would subject them to trial in this county, yet it was accompanied by such inuendoes as could not be mistaken in their reflection upon the entire people of Jackson County. The act and the explanation proclaimed that a conviction could not be obtained for offences that had been committed. My associate and myself were censured for leaving our homes, and becoming their counsel. The learned gentleman of this city who came to my assistance, was charged with having forgotten the feelings of the orderly people among whom

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he lived. But we thought, if it was necessary that fifteen or twenty of the most eminent local counsel, and a large number from the interior, should come to the assistance of the public prosecutor, that it might be excusable in the defendants to have a mere corporal's guard to stand in defence of the rights upon which an attack was to be made by an army of lawyers, so well appointed, occupying the main field and every out post. Moreover, we thought, when censorious expressions proceeded from official sources, that the ministers of the law from whom they emanated, might not be more faithful to their oaths, binding them to support a Constitution that secures a fair and impartial trial, than we were to the best interests of society.

It is well that we should never forget that the Constitution and Laws are the supreme sources of civil power—that an excitement produced by money, for selfish purposes, can never justify a departure from legal remedies. No such exigency can arise. How was this excitement produced? It was done by practising upon the credulity of an unsuspecting community. There had been occasional, inexcusable and unlawful interferences with the rights of a great and wealthy corporation. Instead of attempting to soothe feelings that had been outraged by injustice and oppression, its managing agents established a system of espionage and surveillence. So long as it was conducted by the employment of honest men, its unsuspecting objects were beyond the reach of harm. But, in an evil day, the managing agents of the corporation departed from a fair, prudent and upright line of conduct. Unmeasured confidence was bestowed upon men who had never been known in connection with virtuous deeds—men, who by their lives of crime and infamy, had outraged the feelings of all by whom they had ever been known—men, who by fraud and deception, had succeeded to their confidence and responsible trusts. Taking advantage of their position, they had unfolded, link by link, to their employers, the details of a conspiracy, embracing so many unsuspecting and unsuspected men, and organized to accomplish such wide-spread ruin, that those most deeply interested required confirmation of that which seemed to them so revolting as to be incapable of truth. Strong in their knowledge of crime, and fertile in wicked expedients, the impostors were not long delayed by obstacles in the creation of circumstances that should give an appearance of truth to their revelations, to the minds of those already blinded by prejudice. Three wretches, wearing the form of humanity, whose youth and mature days had left no trace of a single honest purpose or emotion, were regarded as the only oracles of truth in this State. Two of them had recently been inmates of the Penitentiary, and the other had escaped imprisonment, not because of his upright conduct, but by the death of a worthy and esteemed citizen, with whom the evidence of his guilt of a felony was buried. Nearly an entire township of men, in a day of fancied security, having no suspicion that every word they had uttered within a period of two years, no matter how innocent its import, had been misrepresented, and that every time they had greeted a neighbor, had been associated with meditated crimes, were arrested upon the accusation of these men, who had been suddenly transformed from the oblivion of vice to the full blaze of perfect morality.

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Public sentiment had been abused and pre-occupied with an apparent firm conviction that they were all combined for the prosecution of an unequalled destruction of property, and for the indiscriminate murder of their fellow-citizens. The thousand employees of the railroad company magnified their depravity. Possessed of every avenue to the public ear, they had so poisoned the sentiment and feeling of the people of this county, and of nearly the whole State, that the only alternative left was to ride the tempest until it should exhaust itself. It was in the midst of this whirlwind of passion, that you were empanelled.—But, like every other tempest of excitement, it has subsided, and the Law is left to assert its empire over them, and in their defence. It is no longer certain that expressions, disapproving of the policy and conduct of a public and corporate body, will subject men to punishment; and it may well be doubted wheter, upon the allegation of an isolated criminal act, the conduct of a life-time would be deemed important in an investigation of its truth, after the example we have had in this case. Two weeks is the longest period of time that could be occupied in narrating everything that has even a remote connection with the disputed fact. There is an illogical mass of testimony that has been imposed upon you, by making a promise, when it was objected to, that its pertinence should be established, and made apparent by that which should succeed it. If there has been an utter failure to fulfil such promises made to the Court—if the counsel well knew at the time that their pledges would not be redeemed—the object has not failed. That which was designed to prejudice, and to reflect upon the general character of the parties, is before you. It was designed to subserve the same unholy purpose of the declarations, made not only in the streets, and in public journals, but in the presence of this Court, denouncing, in advance, as outlaws, and as their perjured abettors, every man who should be a witness for the defendants.

If I had not seen the indictment, or heard it read, and should be required to state the offence for which the accused persons are being tried, from the body of the testimony alone, I could not name it. No one would believe it was for a simple arson. Therefore, it is well to understand on what proposition you are to deliver your opinion. What is the overt and distinct criminal act that stands affirmed and denied? It is charged that thirty-seven men hired another to burn the freight depot of the Michigan Central Railroad Company at Detroit, on the night of the 18th of November, which is denied by them. To maintain the truth of the charge, it was said by the counsel for the Government, that they would prove that these men had been combined together two years to destroy the cars, engines, track and buildings belonging to that corporation. If a combination had been formed for such a purpose, it would embrace the edifice burned at Detroit. Where is the evidence, in all that has been given in the progress of this trial, shadowing forth an understanding or arrangement between them for any purpose? Shall we be pointed to the idle, careless and unmeaning remark of some one of them, that he would never "give up" till he was paid for animals killed by the locomotives, or to some individual act of wanton mischief? That does not even show a mutual knowledge of the feelings of each other, and falls far short of showing a con-

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federacy—a concerted plot—because there is no general community of design established by proof of an agreement. Individual conduct, in word or deed—cannot be made to overreach its author, and subject others to responsibility, unless those who are sought to be affected, were in combination to accomplish some purpose that would be furthered by such conduct. How may such relations be created between several men, as will make all responsible for what may be said and done by any one of the number? It may be done by an agreement to associate or join in the prosecution of some definite enterprise. If these men had agreed that they would hire another to burn all the buildings belonging to this corporation, whatever was said or done by any one of them, with the view and having the tendency to further the firing of the depot in Detroit, would make all equally responsible. The rule is, that before the statements or acts of one of a company of confederates shall be evidence against his fellows, a foundation must be laid by proof sufficient to establish *prima facia*, the relation of conspirators.—Three things must concur to make individuals, acts and statements evidence against others. 1st. The parties must be combined for a common object. 2d. The declaration must be made and the act performed while the enterprise is pending, and not after it has been accomplished. 3d. They must be said and done in furtherance of the very purpose for the attainment of which they joined together. 1 Greenleaf's Ev. Sec. III.

If the remarks and interruptions of the free transit of the trains over the railway were not preconcerted, but vagrant and impulsive, they are not within any rule of law that can impart to them the dignity of testimony in this cause; and could not be so, if the structure of the indictment was such as to involve the question whether a common purpose did exist which they were intended to further. But the counsel were allowed to prove that which relates not to the fact in dispute now, and here, that which does not concern this, but belongs to another jurisdiction, under a promise that he has not and could not fulfil. It is a part of his case, and its legal effect the subject first to be discussed.

Therefore, I will proceed to the *charaeter, origin and authors of the distinct aggressive acts as proved by the Government, and claimed to be evidence of a conspiracy.*

Upon the 20th of August, Woliver, a witness, Filley and two Prices, went to a culvert west of and near Leoni, broke the chairs and threw the "Gazelle" off. Woliver says it was accomplished with an axe and a mill iron taken from a saw-mill. When and where did these thirty-seven conspirators assemble and determine that the locomotive and train of cars should be impeded and thrown down the embankment west of Leoni? Who of them all knew that such a lawless outrage was contemplated? No one, other than those who enacted it. The dissolute witness, who was one of the number, so convicted from his own mouth, swears that its was proposed in the hayfield, when its four perpetrators were alone. It was the the suggestion of a moment, promptly adopted and executed.

In September, Filley and the witness went west of his house, and put a tie over the culvert, so that the end should strike the lamp. The same is true in this instance. The witness and Filley, as is sworn,

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returned from Leoni in the evening. Upon arriving home, no meeting was held—no associates were consulted—but one of the two proposed the trespass that his mind had conceived at the moment, and it was acted upon in furtherance of their own individual and mischievous design.

Again, in the same month, he and Filley, at the suggestion of the latter, went to the east switch at the Centre, and attempted to move it, but did not succeed—the cars did not run off. "The design was to injure the company." There was no meeting or consultation from which this fruitless attempt proceeded. If the witness is to be credited it was dictated from the evil impulse of the two at the moment.

Again, in the same month, in the fore part of the night, he and Corwin put a bar in the frog. No other obstruction, and the train was not thrown off. In this instance the witness has a new associate, and that which they did was equally unsolicited, unadvised, and unknown to any but themselves, until the next morning, when Mr. Fitch discovered his bar where they had put it; he rebuked Woliver, and warned him against taking anything from his premises again for such a purpose.

Mr. Spaulding found a tie across, the track near the dry marsh, in June, 1849, when going west with the locomotive "Dexter," but does not know who caused it to be placed there. Near the residences of Fitch and Filley he found iron wedges in the track—a little further west a dead animal. That occurrence is made notable by the counsel in his opening argument. It was upon that occasion that a threat was to be proven, coming from Fitch, to destroy the property of the railroad, and endanger the lives of those who travelled over it, by the force of arms. The witness gives a different character to this transaction, which was made a point in the statement of the case by the counsel, showing the determined and depraved intentions of a man whom they charge with being the author of all the injuries that have been visited upon the company. Spaulding swears that he, under the influence of excitement and anger, declared himself ready to be one to resort to the use of deadly weapons. Fitch simply replied that he could come on, if that was the game. He, like the other by-standers, was attracted to the place from seeing the locomotive stop—he had a right to be there—his manner and language was civil. He inquired, what is the trouble? He received a harsh and opprobious answer—he was denounced as a hyena. The animal seen by the conductor, and which he swore had been drawn on the track by a man seen by the fireman and engineer, was but its skin, apparently left there by a dog.

Woliver swears that in the forepart of September last, in the evening, himself, Price and Corwin, stoned the cars from Mr. Fitch's fruit yard. Again, that the same persons stoned them from Filley's orchard. Again, between Leoni and Michigan Centre, this witness says he and Filley met Corwin and Williams, filled their pockets with stones, and divided into two parties, and threw them at the cars. Again at Leoni, at a ball on the 8th of July, Eben Price and Lyman Champlin proposed to give the cars a little. This evil genius says he went with them, and swears that they threw stones. There was no ball at the time he states, and it is extremely doubtful, whether any one

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threw stones at the cars at the time of the ball on the 4th of July or the 8th of August, and it is certain that the persons named by him, did not, for the reason that one of them, Price, was in the room at the time the cars passed, and another, who is not a party to this indictment, has sworn that nothing of the kind took place.

A pile of lumber was burned at Michigan Centre, but by whom is not known. If it was done by an incendiary, it must have been an individual act. But there was no trace of the identity of the person by whom it was done.

A baggage car was burned, east of Gidley's station, some 10 miles west of the place where the prisoners live, and while the cars were running at their usual rate. The origin of the fire remains a mystery. If it be claimed that any of the defendants were on the train, why not prove it? Who had access to the baggage car? Its master was in it —especially at all the stations—hence one of these fire machines could not have been put in it without discovery, while at a station, and certainly not when in motion.

A culvert was burned near the dry marsh. It was seen on fire soon after noon, in the month of June, first discovered by Mrs, Filley. The fire was not kindled by her husband because he was not at home when it occurred. It is true Phelps said he admitted to him that he burned that same culvert, but he has it done in the winter when he was at Niles. This must be false, not a mere mistake as referring to the burning of another, because this is the only one ever on fire.

A train of cars was thrown from the track at Leoni and a man had one of his limbs broken. I regret that the true cause of this accident has been proved, for several most eloquent and *feeling* speeches have been made upon it in the course of this trial by the learned and sympathetic counsel, and especially by the venerable gentleman who has been the champion of the Law. It was known by a large number of men that the repairers had removed some portion of the track, and their signal was not seen in time to prevent the catastrophe—it was therefore the result of the negligence of the track repairers. An attempt has been made to hold these defendants responsible, not only for the injury to the locomotive, but for the shattered limb of an unoffending traveler. It was so far successful as to prove that the train was by some means thrown from the track. The fact that the servants of the Company were chargeable with what occurred must have been known to the counsel, and was so notorious, that we could not refrain from giving the evidence, though the effect should be the removal of a topic so fruitful of declamation. As a compensation of its loss, I commend to the attention of the learned counsel as a theme worthy of their eloquence and their sympathy, *poor Wescott*, in his four different attitudes—first, crawling thro' a space of 4 inches in the fence —second, gazing upon the fictitious forms of Mr. and Mrs. Fitch retiring in the bed-room below, while they were sleeping above—third, with his head and ears thrust through the stone wall under Filley's house, listening to deliberations that were to settle the period of his existence—fourth, running through Fitch's park, the dogs chasing him into *Goose Creek*. Like Bunyan's Pilgrim he got into a *Despond-ing Slough.*

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The first obstruction upon the track in the county of Jackson was discovered in June 1849, by the conductor of the locomotive "Dexter," How long after that before there was any other interference with the road? Not until the last part of August 1850. When did Wescott, Sherman and other spies of infamous character go among the people of that community. In the month of August, prior to the obstruction of the Gazelle. When did these aggressions upon the Railway, such as stoning cars and putting timber on the track cease? They ceased as soon as Woliver, Westcott, Sherman and their associates left the vicinity of Michigan Centre. What a commentary does the coincidence as to the presence of these spies, and the depredations in point of time and locality furnish as to their character. If any other conclusion can be drawn from a fact so striking, than that these impeached and worthless witnesses were the perpetrators of what has been proven, it must be upon some system of reasoning other than inductive philosophy. If you ask what could be their motive? I answer, that Wescott was out of business and destitute of means. He had been seeking the slavish situation of a guard at the state prison, as a means of supporting life at a compensation of less than three hundred dollars per year. Sherman and Woliver had worked on a farm, their compensation could not have been over twelve dollars per month. In the service of the railroad they received five or six hundred dollars per year, and their expenses when permanently engaged, and two dollars for two or three hours of night watching. They had the reason furnished by their increased compensation for keeping up the disturbances. When the obstructions ceased they would lose their employment. If they or any one of them threw stones at the cars, or put timber on the track they reported that some of the prisoners had confessed the act, their story was reduced to writing and they were required to swear to its truth. They have all examined their affidavits prior to coming to the witness box. If false they dare not depart from their sworn statement.

Henry Brown, a colored man, swears he heard Filley say "he had no sympathy for the company"—"that the dry marsh would be a good place to run the cars off." "That they would let them know there was a God in Israel." He also heard Freeland say "there could be a plan fixed to blow the cars up." Has any such attempt ever been made? If so it is not proved. Woliver swears he heard the defendants say they "would never give up until they were satisfied for the damages they had sustained,"—"that they would carry out their object in some shape,"—they would stone them and throw them off the track." If any were arrested, they would swear them clear—he heard them say "that spies ought to be knocked over—killed."

Who made these threats? Upon his direct examination, Woliver attributes it to all of these defendants. Upon his cross examination he is not able to name any of them other than Champlin, Moulton, Hay, Tyrrell, and Fitch whom he had seen at Filley's house. Are these declarations in furtherance of a common design? If so, what was it, and how was it to be accomplished. The only motive assigned by these witnesses to any of the defendants was, a desire to procure payment for the property they had lost. Was it lawful? This is a

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question that cannot be answered, as it depends upon circumstances which have not been proved upon the trial. If property was destroyed by the locomotives of the company which might have been saved by the exercise of common prudence, the defendants had a right to seek compensation by ordinary and legal means. There is nothing in the evidence that shows that they were insisting upon rights which did not exist. If the engineers upon the road could have avoided the destruction of property in any given case, without serious detriment to the interests and business of the company, but neglected to do so it furnished just cause of complaint. The acknowledged feelings of hatred entertained by all the officers and servants of the company towards the citizens of Leoni, renders it quite probable that they neglected to exercise such a degree of care to save their property, as they might and should have done. It is true, that such conduct and treatment would not justify the injured persons in obstructing the free passage of the cars, or in wanton measures of redress. But it is equally true, as a moral and legal proposition, that they had a right to express their opinion privately and publicly, of a course which they conceived to be wrong.

How were these repressions made? Not as the embodied and combined sentiment of the suffering parties and their friends, assembled for the purpose of devising means of redress, but they were casual remarks expressing the individual feeling of him from whom the sentiment emanated, uttered in the midst of a promiscuous gathering of two or more individuals, in a bar-room. "The railroad was the usual topic of conversation." Why was it? This witness, who confesses that he was one of the principal aggressors, upon every occasion that anything wrong is shown to have been done, says that the reason it constituted a topic for talk was, "that cattle had been killed." Is it surprising that such occurrences, as frequent as they were in that vicinity, should excite remarks from those who were thus, in some instances, deprived of the last vestige of property they had on earth?

Another expression which he says was frequently used in reference to what had been done, was, "it is right." What does such a declaration as this show? Not that the person who made use of it had advised or procured that which he commended, or that he had any previous knowledge or intimation of what had been done. Another expression proved by him is, "They will have no peace on the road until they pay for animals they kill." This opinion was expressed by Champlin.

Fitch is made to say, "The Company can never run their road with safety, until they come out and pay for cattle killed and damages done."

Again, in writing to the Superintendent in October, 1849, to inform him of the insulting conduct of an Engineer in refusing to stop the train for passengers upon the usual signal, he concludes the letter by this remark—"Now if this policy comes from you or your legal advisers, as did the half pay proposition, if serious accidents do occur on the road, on your head and yours alone, must rest the responsibility." That expression and that letter are evidence, and must have been intended to have some influence as proof. Do they amount to a threat

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that serious accidents *should* occur? If the remark that was made be separted from the balance of the conversation, and the last sentence of the letter be detached from that which precedes it, such an unfair, illiberal and unjust motive would not be attributed to the author, even by the most unprejudiced mind, unless to subserve the purposes of this prosecution. We have no disposition to shun any responsibility growing out of the letter. The Central Railroad is a public thoroughfare, and was once the property of the State—subsequently sold, and now owned and managed by a body corporate and politic, under a charter imposing upon it the obligation of receiving and transporting upon it passengers and freight, under severe penalties. It had a signal station at Michigan Centre, which was a promise and a pledge to the public that its regular trains should stop there for passengers. A gentleman and two ladies, friends of Mr. Fitch, from a neighboring State, relying upon the faith of this pledge, were there to take passage on the cars. The engineer made no effort to accommodate them, but passed with an insulting, sneering taunt. Was it improper to represent the fact to the Superintendent? Was it wrong and criminal to admonish him, that such a want of courtesy would rather aggravate than lessen the enmity that had been already engendered from what was regarded as real injuries? That which is imputed to the same defendant as a constructive threat "that they would have no peace on the road until they paid for cattle they killed," was intended as an expression of his conviction, that the feelings of the inhabitants who peopled the line of the road had been so outraged, that a due regard to its own interests should induce a change of its policy by the Company. It was prompted by what had already occurred, evincing the fact that however wrong, impolitic and wicked it might be, yet there were some who were so powerless, that they could not measure arms with a wealthy corporation in the courts of justice, who would retaliate by destroying its property.

Another expression shown to have been made by one or more of the prisoners, was, that the affairs of the Company were badly managed—that it was 'a monopoly.' Whether all such corporations are or are not monopolies, and whether they are more prolific sources of evil, than of blessings, and benefits, is a question of political economy, upon which the sentiments of legislators and constituents has been and are still divided. They were not favored by the people of this State during the first years of its history, but the government undertook to construct and control all works of internal improvement within its limits. An adverse policy was not the result of a change of public opinion, but its inability to complete and equip the roads it had projected and commenced. This Railroad was built and equipped for the accommodation of the people—it depends upon them for its support. While they have no power or disposition to control its management, they are deeply interested in the policy that shall direct it, and may require that the individual rights of the citizen be respected by its agents. They have a right to discuss, criticise and censure what they deem to be unjust and oppressive—and there is no power in this government to indict, convict and punish any of its citizens for opinions so held or expressed.

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"They would stand by and swear each other clear," is another expression. Who would swear each other clear? Woliver says *they*, meaning all of them. When pressed upon the cross-examination to name the persons and to tell what was said, he named four of the defendants, and the language used was, that "they had decided to stand by each other." Who were to be the witnesses? He says, Ladue, Cann and Jenkins. This was an unfortunate selection—two of them are nominal defendants in this cause—not one of them shown to have ever seen the Railroad, or to have had any acquaintance with those whose witnesses they were to be. Wescott has a different list of witnesses. It is headed by the Hon. H. B. Lathrop, who lives at Jackson, entirely removed from all social relations with any of the prisoners—at one time in the House of Representatives, subsequently in the Senate of your State—then and now one of your most honored, upright and respected citizens. He has been sworn as a witness; so have Mr. Delamater, Mr. Holcomb and Hurd, three others who were to commit perjury; Why have they not sworn them clear? Where are the other gentlemen named? One of them, Morrison, has been a witness against them. You have seen five of them—you have seen that they are all of them high-minded, conscientious, incorruptible men; they are the men whom a felon, who escaped his punishment by the decease of a witness, has denounced as suborned and ready to forswear themselves.

"They would kill spies." Why should they kill them? Not because of any discoveries they had made which could harm them.—What weapons did they use? Not such as are usually employed by the assassin, nor did they seek to decoy or surprise any one in an unfrequented place. But Wescott, who was so vigilant that he lurked about their premises in the night time, was treated with a generous kindness due to a better man. While engaged in the furtherance of a wicked scheme to disgrace, ruin and imprison Mr. Fitch, he was living upon his hospitality—he was sheltered in his house and fed from the bounties of his table. Is this the means by which this spy was to be murdered? The day of Dr. Rankin's decease was one of evil omen. It left a villian, who had forfeited his social and civil position by a forgery, to crown his infamy by perjury. So many threats, so often repeated, would not answer. They would not sufficiently show the peril of life that had been encountered by these public benefactors, without some attempt at murder. Wherefore, this spy thrust his head and shoulders through an aperture in a wall and there heard a plan for his own murder discussed and settled—like Stephen, he was to be stoned. He told his superiors at Detroit of his impending danger. This falsehood served him a good purpose. He was promoted to employment in the depot at Detroit, and lived to come into the witness box in presence of this jury, pale and trembling under the load of falsehood that he has stated as truth in this cause.

I leave this story with the simple suggestion, whether it is probable, that if an attempt upon his life was meditated, the dining room of a hotel, with the inmates of the house all present, would be selected as the place for killing him. Thus I have enumerated the substance of declarations which have been proven, and which are claimed to show deliberation and concert between the prisoners.

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The counsel said he would prove that the prisoners were regularly organized by a written or verbal agreement, and met in secret conclave. Where did they assemble? Not in secret. How did they assemble? Not by appointment—for the reason, that whenever any of them met, it was evidently accidental, and because the place where they were seen was a bar-room, open for the reception of any and every one; or in the ball alley, where they were accustomed to go for recreation.—There was no regularity in the attendance of any one of them. On some occasions, Corwin and Williams were there. At other times, Price and Champlin were there. Each one was at liberty to converse upon whatever subject was most congenial to his taste. No effort was made to prevent intrusion. Woliver seems to have been always present. Was there a secret meeting in the ball alley at the time of the fight which has been alluded to? If so, Sherman and Wescott were of its numbers. Was it a secret conclave, gathered about the locomotive "Dexter," and who composed it? Not twelve or fifteen men, approaching at once and from the same direction, as stated by the Conductor, but from four to seven, coming from divers directions and separately, as stated by the engineer and fireman. Was that a regular, or a special secret conclave, assembled in Filley's bar-room, when a homicide was discussed? Was the casual meeting in the sitting-room at Bascom's Hotel in the village of Jackson, where the constable served a process upon Phelps, a secret conclave? Was it a secret conclave, in the bar-room at Leoni, when Phelps was there to induce Corwin and Myers by falsehood to go to Michigan Centre with him? Was it a secret meeting at Filley's bar-room, on the evening of the 11th of April, when Hudson and the stranger from Marshall were present? If so, who but Phelps is responsible for it, with all its results? In short, was every promiscuous and casual gathering of two, three or more persons, at the most public place in the town, the most public house in that place, and the most public room in the house, a secret conclave, where details of a "conspiracy which has but two parallels in the history of the world," were elaborated? The affidavit and complaint made by Phelps, upon which the warrant was issued for the arrest of the prisoners, contains the names of forty-four men. In that complaint, he has solemnly declared and sworn that *each* and *every one* of them were conspired together and had been from the year 1849, for the destruction of property and life; that in pursuance of an agreement between them all, they had not only employed Gay to carry out their common purpose at Detroit, but a certain other person, (meaning himself,) to burn a depot in Berrien county. How does it happen that his memory as to the connection of all of the prisoners except five with the offences enumerated in that complaint, has become oblivious? He says he was their confidant—that he had deceived them into the belief that he fully sympathized with them—that he met with them by appointment; and yet he has not sworn to a single secret assemblage of any of them. Does it rest with the counsel for the Government, when four or five persons are seen at a bar-room, attracted there by that which is too much the attraction of such a place, to characterize their casual meetings as a secret conclave? Do they believe that fifty farmers, scattered over sev-

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eral townships, were accustomed to meet to concert crimes involving the destruction of property to the amount of seven millions of dollars, and an indefinite loss of life? Is it conceivable, that fifty men, who have lived honored and respected, would combine to obliterate every trace of a great public work, that brings them into an immediate proximity of neighborhood with market towns? a work, if well managed, that is the surest guaranty of their own prosperity, the benefits of which will be the richest inheritance of the future generations who shall succeed to the inhabitancy of this State. Where is the evidence of the written or parol constitution? Wo were the officers of this dreaded association? Like every other fearful thing in connection with this prosecution, they are creatures of fiction, and their history will only be transmitted by the opening speech of the counsel. They will live in memory while that speech shall be read and remembered, and no longer.

Combine the evidence of distiuct aggressive acts, of declarations, and secret deliberative meetings,—they include all the testimony from which you are solicited to believe that the prisoners had entered into a compact that had continued for the space of two years. If such is the fact, would there not be other evidence of its truth, in the ruins of depots, removal of iron rails from the track, in throwing cars down embankments and into the *dry marsh*, and in some loss of life?—Would not such a picture be the legitimate consequence of a conspiracy embracing fifty men, instead of an occasional obstruction upon the track? In every instance where it has been proved that the transit of the cars was delayed by obstructions or by stoning them, the evidence excludes even a probability that it resulted from the deliberations or advice and consent of any person other than those who were present and committed the outrage. Who advised or knew that stones were to be thrown at Leoni on the 8th of July? Woliver says it was suggested by one of the four by whom it was done. Who advised or knew that stones were to be thrown into the cars from Filley's orchard? Admit that Woliver tells the truth, no one but himself and one other person, who helped him to do it. The same is true as to all the depredations to which he has sworn. He is the only witness by whom an intermeddling with the track or cars has been proved. Who procured or advised the burning of the woodpile that Sherman, a spy, has sworn about? He says that he was told by agents of the Company to lead Corwin to do it. He followed the directions of his superiors.—Corwin drank with him so freely, that he was forced, literally and physically, to lead him, for he could not walk without support. Was the burning of this wood concerted in a secret conclave by these prisoners? The testimony of all these witnesses conspires not only to refute, but they prove that none of these aggressions were committed in furtherance of a common purpose. Therefore, if this branch of the case is essential, it must rest for its support upon the evidence of Phelps, Lake and Wescott. No conspiracy is stated in the indictment, but they are charged with having incited another to do that which the law defines to be a felony. Hence it is not important to a correct decision of the question involved in the present issue to inquire or determine whether such relations existed between them or not. If they

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had agreed with each other to procure the burning of the edifice, and have done so, the agreement is merged in the higher offence of its execution.—5 Mass. Rep. 105.

If Gay ever made any such admission as is stated by Phelps, it shows that he fired the building in the cupola at eight o'clock in the evening. This would have been almost impossible, because several men were engaged in elevating wheat until twelve o'clock of the same night in the immediate vicinity of the cupola; besides, a watchman was on duty. A man of Gay's dissolute habits and appearance could not have passed unchallenged through the entrance of the building, ascended the stairs, traversed four hundred feet of the edifice upon the second floor, and ascended the stairs to the cupola, in the very midst of the men at work at the wheat bins. It is impossible that he should not have been seen, and if seen, a box containing the match could not have escaped observation.

If he carried the match to the depot on that occasion, it was charged and placed in a box filled with camphene, without any substance intervening between that fluid and the cotton which was set on fire at his house and in this condition conveyed from his residence through the streets of this city. It does not require an intimate acquaintance with chemistry to determine and know the fact that this fluid within the box would not add to his success, because it is incapable of combustion. Before he could have proceded twenty feet his fire would have become extinct, without the presence of atmospheric air. Turpentine or camphene would not supply the oxygen.

The admission by Filley that he was an accessory before the fact is that Gay was directed to place the machine in the cupola, and that he followed directions. Fitch makes the same statement as to the means by which it was accomplished.

Thus it will be seen that what has been sworn to as evidence in this call combines to fix the origin of the fire in that particular place. The general proposition that a confession made freely from a self conviction of guilt is competent evidence, is not disputed. We must first, then, be convinced that such admissions were made by the defendants to whom they are attributed. It is not improper to suggest that nine tenths of the perjury committed in courts of justice is by fabrications of an admission either direct or by implication, under circumstances that renders a construction improbable. There is a moss striking uniformity of expression in the language that conveys the confession of such of the defendants as Phelps and Lake have sworn were made to them. In every instance the language employed is "I paid twenty dollars towards burning the depot in Detroit." "I paid fourteen dollars." "I paid thirty dollars." "It cost me a cow and forty-five dollars." "I paid twelve dollars." Two of the defendants only, departing from this stereotyped phrase, proceed to state the manner in which it was accomplished, and one of them, Filley, being more garrulous than the others, proud of his inventive genius, gives a minute description of the manner in which their fire machine was constructed.

There are reasons, strong and conclusive, against the truth of this portion of the diary which Phelps has recited in your hearing. It is unusual and improbable, that men possessed of ordinary intelligence,

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all having their friends, some of them surrounded by many of the luxuries of life, and by the felicities of the domestic circle, consecrated by years of uninterrupted enjoyment, should thus force that which was a secret to the whole world beside, upon a worthless vagabond. The fact that a second and a younger villain was associated with this *prince of devils*, after the plot had progressed through half its history, incidents and fabrications, to whom admissions are represented to have been thrown out in the same easy, half-careless form of expression, furnishes no stronger proof of their verity. Men of known integrity, and whose veracity was beyond the reach of corruption, possessed of all the advantages which intimacy and personal friendship could bestow, have approached these defendants with the view of learning whether they were connected with or had procured the commission of misdemeanors, in vain. The punishment denounced by the law upon the act of obstructing cars or removing rails, is not infamous. Yet, with all the appliances, skillfully wielded, which have been adopted by the numerous respectable persons who have successively for the last two years confidentially, secretly and openly labored to discover the evidence of guilt of some of these defendants, or others who were suspected, nothing but successive failures resulted. But when this *High Priest of Iniquity* appears upon the field, a man by whom he was loathed and shunned, who was so well convinced of his hopeless depravity that he refused to sign a petition to the Executive of the State asking the interposition of his clemency to terminate his imprisonment, when the period of his sentence would have expired in the short space of six months, makes him the depository of his liberty, of the hopes and joys which surround the domestic hearth;—this graceless villian, who in your presence tells the monstrous falsehood that that defendant, Mr. Fitch, who was instrumental in his conviction and in bringing upon him the just punishment of one of the felonies he had committed, was his best friend, should remember that the jury box is consecrated to justice and to truth. No relations of intimacy or friendship had ever been established between them. His brief residence at Michigan Centre is celebrated only for a fraud upon Mr. Root, who is a friend of Mr. Fitch; therefore not calculated to recommend him to the confidence of those from whose minds the recollections of his conduct had not been obliterated. He left Michigan Centre, after a residence of a few weeks. From that time to his trial in 1844, he was not in the vicinity of the residence of these defendants. Although he has denied upon his oath any feeling of enmity towards Mr. Fitch, it is nevertheless true, that he has occasion to remember him as long as the recollection of his own imprisonment shall endure, as having performed the duty of a good citizen, faithful to the laws, in giving countenance and assistance to his prosecution, and to a fair and impartial trial. That he does remember it, is shown by the testimony of Mr. Calvin Beebe, a worthy, high-minded and conscientious man, who has told you that the first feelings awakened in the mind of Phelps upon receiving from him the intelligence of his pardon, was hatred and revenge. The only intimation which he then gave of his future career, was a most deliberate and determined threat, not to overwhelm Mr. Fitch with tokens of gratitude for the friendly assistance he had rendered him

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upon his trial, but to give him the same feed that he himself had had. It is not true, then, that he was invited to visit this defendant as one of his best friends—to receive the assurance of his sympathy for a wrongful imprisonment. If he was induced first to go upon the premises ot this party, as he states he was, and if a partnership with him in making connterfeit money was so much desired as that Fitch should propose to hire him to burn a depot, as a means of giving him the pecuniary ability to form such a criminal connexion, why should it be necessary to tell him what was done by Gay in the city of Detroit? Is it consistent with the history of those who make crime and plunder their vocation, thus to publish the fact, especially to one who had not become associated with them? This question is disposed of, by showing that there is so much of truth in what he has related as occurring in his first and second interviews, as that he was at Michigan Centre; but the balance must be false—it is made so by proof that he approached that defendant with the lying and deceptive pretense of wanting to purchase his oxen—that he was repulsed with what might be termed rudeness, and what would have been so regarded by any man who was not a hopeless villain, whose purpose was not honest, but wicked and corrupt. How strangely does the truth, as shown by his relatives, comport with that sincere friendship and regard with which he says he was received upon both of these occasions, and the proffered hospitalities of the table. It was at these interviews that he makes Fitch admit his participation in procuring the commission of the felony described in the indictment. Having shown an absolute impossibility that it should be true, how can he be believed capable of speaking the truth as to any other material facts?

When and how was the match and money sent to Detroit? If we look to the extract with which we have been favored from the late book by Phelps and Lake, there is a careless uncertainty as to dates which is to be regretted; but it may be excusable if it was the production of the junior author, and was inadvertently transcribed to the diary without the criticism of his more accomplished and classical associate. The time was last fall, and it was sent from the Centre.—Who carried it? Not any one residing there, for it is inconceivable that any of the defendants should have gone from there to Detroit without the knowledge of some one. It could not have been Gay himself, for he was never there. If sent by any one, it must have been some person who lived in Detroit; for the reason that the money was retained until after the service for which it was to pay, had been performed. Who, then, is that person who acted as the broker of these men? He must have been a fictitious being, for if such a thing really occurred, the man who carried, kept and paid the money, could and would reveal the fact. This confidential agent could not have come from the neighborhood of the prisoners and remained in this city waiting for Gay to fulfil his agreement, without his absence having been known to those by whom he was surrounded. And if it had escaped their notice or memory, a thing so important, and which would corroborate this abandoned witness, would have been drawn from the defendants or some one of them by Phelps. Would they not be quite as likely to tell him who it was that performed this important part in the

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progress of their arrangements, as to tell him who was the principal man in the commission of the offence? But if it is true, as we allege, that the arrest and trial of these defendants is the result of the conspiracy between Phelps, Lake and Wescott, it would be hard to supply this omission even by fiction; for if he had made those who he says stated that a purse was made up for the purpose of paying for the crime, go farther, and state that some particular person carried it to Gay at Detroit, he would have furnished the means of showing either the falsity of his own statement, or the means of showing that if the admission was made, it could not be true—as if he had said they told him that it was sent by Farnham or Lemm. It could very easily be shown by them that they had not been to Detroit or absent from their homes, within the whole year. So, also, if he had made them say that it was sent by Smith, or by Boyce; one could show that he was not away from this city at any time last fall, and the other, that he was in jail, perhaps. The truth could not have been suppressed by making such a pretended accomplice a defendant to the indictment; for his friends and neighbors would know that he was not from home. If he had even charged this act upon Jo. Dows, the same difficulties would result.

When and where did Fitch, Filley, or any one of the thirty-seven prisoners who have been on trial ever become acquainted with, or even see or hear of, George W. Gay? None of them have ever lived within eighty miles of him; nor had any of them been in Detroit—at least it is not proved that one of them had ever been here within two years before the fire. But if Fitch had visited Detroit, how did he find Gay? who informed him of the existence of such a person? and what was there in his character, habits and appearance, that he should be selected, above all others, as worthy of confidence? There was nothing to attract a person to him for such a purpose. His vicious habits had left him a mere wreck—he was dissipated and surrounded by lewd women —his house was open for the reception of any one who chose to visit it. So situated, it would have been seen at a glance that betrayal was one of the chances that must have been encountered by his employment. His house was filled with inmates from whose eyes it is hardly possible that such a novel instrument could have been kept. If he had left his house on the night of the fire a sufficient length of time to go and to return from the depot, why have they failed to prove the fact by his wife, having her under the influence of Lake? What reason could have induced her removal from the city, and why was she surrounded by the instigators of this prosecution to prevent any communication with any one in behalf of the defendants unless her evidence was feared? Thus it is shown that the prisoners who are charged with having procured the act of the principal, had no acquaintance with him.

The fire when first discovered was not located in that part of the building in which the admissions sworn to by Phelps locate it. Capt. Turner swears that he was in his vessel upon the south side of the depot at the wharf: that he first saw the fire in the cupola, and at no other place. However, he might be, and probably was deceived; he being upon the opposite side of the building, the reflection of the fire

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upon the large windows in the cupola would give it the appearance of being located where he believed it to be. It was a mere optical delusion, which could not be avoided in his position in relation to the cupola, with its windows, and the fire where it was in fact blazing from the roof, as described by the witnesses for the defence, who saw it from different and more advantageous localities, two looking from the third and fourth stories of Johnson's Hotel, one looking from an eminence at a little distance south of the depot, and commanding a perfect view of the roof, with nothing intervening to create any such delusion.

The dimensions of the edifice and uses for which it was occupied, rendered it liable to take fire from accident. Several witnesses for the Government have sworn that the engine and machinery were so disposed, and the depot so constructed, as to render it improbable that it should take fire from accident. This may be true in their opinion, but all experience and observation shows that it could not be free from danger. Its roof of pine shingles presented a surface of eight hundred feet in length, with no better security than paint. It was lighted upon the second floor, by candles, sometimes used without reflectors, by being placed upon the wheat bins made of undressed pine, and permitted to burn until the candle was consumed, so that the blaze would come in direct contact with the dry and combustible material of which they were composed. On the night of the fire, men were at work in elevating wheat to those bins until twelve o'clock. The particular manner in which they secured their lights upon that evening does not fully appear. There is no reason to conclude that the lights were arranged differently at that time than they had been before. It is a singular fact, that no one of the servants of the Company who were laboring about the wheat bins until within an hour or two before the fire was seen, has been called here as a witness to show that the lights were so well secured as to prevent its origin therefrom except an overseer. The names of those persons are not known to the defendants or their counsel, hence it was not in their power to procure their evidence.

It is unaccountable that the fire should have been seen first in a blaze ascending from a scuttle window in the roof, before any blaze was visible in the cupola, unless it originated from these bins. The floor of the cupola was some two feet above the edge of the roof of the main building, as testified by Mr. Brooks, and if this box was placed upon that floor, the whole cupola would have been enveloped in flames and consumed before the fire could have spread to such an extent as to burst forth in a flame from a window in the roof, several feet therefrom. So that it does now remain a mystery whether it was the result of negligence or design. There is nothing but the simple naked statements of Phelps and Lake, of certain pretended admissions from which to draw a conclusion that it was designed. It is not even shown that Gay was not at his house at the time, or that he or any other person was in or near the depot at that time. It is not shown that the alleged incendiary had any such destructive implement.

PROOF OF THE CORPUS DELICTI.

Like every other criminal trial, there is a distinct and isolated crime

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charged upon the defendants in this cause. There are three counts in the indictment. The first, names all the parties to the record as principals in the commission of an arson. The second presents Gay as the principal offender, who performed the overt act. The third, charges that the defendants now upon trial procured Gay to commit the offence, which makes them accessories before the fact; the last with having feloniously maintained him after the crime, knowing that he was guilty of it. The evidence is all addressed to the third count, and it rests entirely and exclusively upon admissions. It is said by Phelps, that at a first interview between him and the supposed felon, the latter confessed that himself and a number of men living in Leoni, were connected with the burning of the depot. This conversation occurred within a few days after the fire. At a second interview on the next day after the first, he is made to disclose the means by which the fire was communicated, and the names of those who furnished him with the latest invention for incendiarism. Who was the man who thus confessed and boasted that he was the author of such a revolting crime? The prosecution said that he was a man who had been notoriously engaged in all manner of crimes. He was about fifty years of age, and so far as we are advised, he had never been convicted or detected. What induced him, at that advanced period of his life, to publish that he had done that of which he had never been suspected? Not any relations of intimacy or friendship with Phelps, for many years had elapsed since they had seen each other. What led Phelps to seek Gay at the time he did? He must have had some motive. It could not have been from any suspicion that he was the midnight incendiary whose depravity led him to destroy that magnificent structure, which was not only an ornament to your city, but the just object of the pride of its citizens, because Phelps had not then become interested in the detection of the guilty one. He was in the service of the United States' District Attorney, ferreting out counterfeiters as he says. He did not seek him under an impression that he was engaged in making spurious money, for the reason that he had known nothing of him for years. How did it happen that Phelps was directed to the very saloon where Gay and Van Sickles were in consultation? Moreover, how did it happen that Gay should meet his friends in a public saloon, there to discuss and devise plans for escaping punishment for past misdeeds? Why did they not assemble at Gay's own residence, where they would have been secure and unmolested? Why was Phelps admitted to their confidence without any knowledge of his habits? But again, it is said by Van Arman that the same thing was repeated in his presence.—Was it said from a consciousness of guilt, or was it an idle boast? This witness approached him in disguise, and, as he says, under an assumed, false and villainous character; he professed to be an accomplished counterfeiter, and to be possessed of an inexhaustible amount of well-executed spurious bank notes. He solicited what might be termed a partnership. He boasted of fictitious and flagitious crimes. It is a settled rule of law that, a confession shall be evidence agianst him who makes it, only when made freely and from a sense of guilt. If any inducement is held out to excite hopes of favor, that prompts the admission, it cannot be free. If deceit be practised upon the mind that

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leads to the declaration of an act that was not perfomed, it is not conclusive. This witness admits that he procured the statement from Gay by finesse and deception. Would it be strange that Gay should have deceived him? He professed a desire to become associated with Gay, if he could give sufficient assurances of his discretion and shrewdness in criminal enterprises. He spoke of burning buildings, proffered his assistance in destroying your entire city, called the attention of his dupe to the burning of the depot as an exploit of extreme merit. Under such circumstances, would it be surprising or inconsistent with Gay's life and character, that he should have claimed the paternity of an exploit so meritorious in the judgment of his friend and contemplated associate? The evidence of the witness is, that they were engaged in a lying, bragging revel. He would hardly deem it fair that he should be held responsible for the falsehoods he uttered, by trial, conviction, and sentence for the crimes he professed to have committed. Is it just to hold Gay to the truth of what he said, when responding to that which was untrue? There is a legal objection to all the statements of Gay which have been proved in this cause. He is not on trial. Therefore, nothing that he may have said of himself, can be evidence against the prisoners. I has repeatedly and always been held, that the admissions of the principal felon are not evidence of his own guilt as against accessories. The body of the crime cannot be shown in the present trial, by the declarations of any one who is not on trial.—If Gay had not been indicted, the prisoners being on trial as accessory to the arson, could not be affected by his statements. The fact that he was indicted, cannot add any legal force to anything he may have said, as evidence against others. His statement that those named in the indictment hired him to burn the depot, and paid him for doing it, is no proof against them that they did so. Why, then, should his statement that he did burn it, be evidence against them of his doing so? Russell on Crimes, 43; Roscoe, 40.

Phelps swears that, about the 18th of December, he went to Michigan Centre to see Fitch: that the real object of his visit was "*to lay him out,*" that he had become satisfied that this defendant was connected with operations beyond the limits of his own county. He professes to have gone with him to his barn, half a mile distant from his house, and that he was there shown spurious money, and the implements for fabricating it. He affects to believe that something was said at that time about the burning of the depot. If anything was said, why has it failed to find a place in his diary? Not because he was not then employed by the railroad, for that would not obscure his memory or induce carelessness. because he was there to accomplish the ends of public justice, if he has told the truth as to the reasons that induced him to go there. But was it true that he was there from any pre-existing evidence of guilt? A correct answer to this question involves the credibility of himself as against five witnesses, whose statements concur to show the impossibility that what has been related as a real occurrence could have happened. He swears that the conversation at the barn occupied the space of two hours. At least half an hour must have been occupied to go there and return. What space of time elapsed between the act of his leaving Laycock and Blackburn,

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and his rejoining them to return? Henry and Martin Laycock and Blackburn have sworn that not to exceed half an hour intervened; and the latter witness says that he went not to the barn, but to the residence of Mr. Fitch, directlyopposite the tavern, with the avowed object of purchasing of Fitch a yoke of oxen; that he returned after the lapse of a few moments, complaining of his treatment; they then returned to the residence of Mrs. Laycock, the place from which they started, at about one o'clock; from whence he and his wife and child were carried by one of these witnesses to the house of another of his relations, where he spent the balance of the day. Hence that which he has related as havingooccurred between him and Fitch is a mere fabrication. It is not only improbable that he should have been at the barn, but it is not possible.

Again, he has sworn that in the first part of the month of January, he went a second time to the Centre, in company with Wm. Laycock, a relative of his wife; and in the ball alley, near the hotel, "Fitch spoke to him of the Depot in this city; said they had prepared the match there and sent it to a man in this city, and paid him one hundred and fifty dollars for burning the Depot; said it was constructed so as to burn a given time, and they gave instructions about it; he did not tell who the person was it was sent to, but said it had been done as directed, and when it burst out it spread so rapidly that all the water in the river could never extinguish it; said they had injured the company to the amount of half a million of money during the past year, and would double that the ensuing year." Did Fitch make any such statement or confession to him? The man who accompanied Phelps to the Centre, and was with him constantly during his stay there, says that no such conversation occurred; on the contrary Phelps pretended to be anxious to purchase the oxen again—that after making two or three offers, which were declined, he was told in an abrupt manner that *he* could not purchase them at any price. Was this the language of confidence and friendship, or was it prompted by distrust and a knowledge of the infamy of his character? There is no probability of mistake on the part of Laycock, for he was solicited by Phelps to carry him to the Centre, upon the pretence that his only motive in going there was to make the purchase. He went from the buggy to the bar-room with him, thence to the ball alley, where he heard every word that was uttered between them. From there he again accompanied them to the bar-room, where an increased sum was offered by him for the oxen—to which he received an answer that terminated the negotiation. They left, and Phelps, chagrined at his ill success, threatened this defendant with imprisonment and disgrace. Why did he go to the Centre at that time? Was it from a desire to purchase the oxen for an equivalent, or was it to make an attempt, by false pretences and tokens, to corroborate a pretended confession of the third great crime of the world? The dialogue that occurred between himself and wife after they had retired, furnishes a significant index to his real design. She inquired if he was going to see Fitch the next day, and if he would be able to do as he had expected?" to which he replied, that "he should go, and if Wescott would prove true and do as he had agreed, he thought he could come a good drive. What was his good

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drive? Not the purchase of the oxen, because he could not get them without paying their value. Not in any other lawful or legitimate enterprise, because he did not contemplate any. The object he had in view must have been illegal, secret and corrupt.

The false account that he has given of what transpired between himself and Fitch, on the next day, shows how his drive was to be accomplished. He professes not to have formed the acquaintance of Wescott until late in the month of February. Is it probable that he was employed in the same vocation, watching the same persons, making reports from day to day of his observations, to the same employer, and failed to come in contact with Wescott?

On the 25th of December, another of the prisoners is said by him to have inquired if he had not had nogotiations with Fitch about burning the Niles depot, and by way of encouragement, to have stated that they made a match, describing the manner of its construction, and sent it last fall to a man in Detroit, with instructions to place it in the cupola; that he did so, and the depot was burned by it. What induced him to go to Filley's on that day? Not the request of Fitch, made at Jackson the day before he was sworn, because he did not and could not have seen him at the time and place mentioned, for the reason that Fitch was in another part of the county on that and the two succeeding days. Therefore, he swears false when he says he was there by appointment on Christmas day. He was there from the promptings of his own evil thoughts. It was a holiday and the occasion of a public gathering. He swears himself that there was a shooting match on that day. Hence it was a fit occasion for his presence, if he designed to swear to admissions, but not a suitable time or place for a criminal rendezvous. How did it happen that Filley should relate the history of an arson already committed? Phelps says that it was because Fitch had told him of the interview at the barn. But no such interview occurred. Therefore there was no inducement for the confession. He swears that that statement was made in the ball-alley, and that Lemm and others heard a portion of it. Is this the reason of Lemm's being imprisoned and put on his trial jointly with the others? Nothing else has been proved against him. A confession of so much moment, so fraught with guilt, would not be left without his corroborative statement, if he was really present, and if the thing really occurred. The bare fact of placing him in the relation of a party, is strong proof that the story is a fiction. What was withheld from Phelps on that holiday visit, the first one in all his life that he had made to Filley? Every incident of his life not surrounded with danger and disgrace. What was communicated to him? A long series of misdemeanors, concluding with the details of a felony, conceived and related in a boastful manner. Who made the first advances, and how did the conversation commence? Filley is made, first, to inquire of this journeyman witness if he had received a proposition from Fitch to burn the Niles Depot, and if he had concluded to accept it. What interest had he at that time in the discovery of those who were connected with the injuries that had been visited upon the railroad company? He had not then been employed for that purpose. If a portion of these prisoners were his best friends, would he attempt their ruin without procure-

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ment or reward? Early in the month of January, in talking with Williams about a plan to get rid of dangerous witnesses, he represents him to have said that the burning of the depot cost him $17; subsequently $20. Freeland at the same time said that he had paid $14 towards burning it. Price, that the burning of the depot cost him $10. Corwin, that it cost him $12. Willard Champlin, that they had made up a purse for Gay for burning the depot. The balance of the fold are brought in by Lake. Mount and Ackerson were principal witnesses against Phelps at the time of his conviction for horse-stealing. It was an act of extreme prudence in him that he sent Lake to receive the confession of these two prisoners. Like master, like pupil. Phelps always obtained admissions from those to whom he devoted his attention, at the first interview, and as the first thing said, so with Lake. He pretends to have been informed at Jackson that his two subjects had taken a job of "grading" the wheat house at that place; wherefore he went to see them to draw them out. He remained at Ackerson's house some time, until he returned with a load of hay; he then got the two together, and although Mount was beset by officers for grabbing a pair of buggy wheels, the few moments that he was with them at the barn answered all the purposes of a day. They not only told him they had taken the job of burning the wheat house, but they had made up a purse last fall for Gay, for burning the Depot at Detroit. There may be so much of truth in this relation as that Lake did go to Ackerson's house, under some false and lying pretence; but the story itself bears unmistakeable evidence of its real paternity. Its characteristics are too striking—bears too strong a resemblance to the free, easy and accomplished style of the confessions to which Phelps has sworn, to leave any doubt that he wrote that part of the diary. Lake may have suggested the story of the hundred loose women who were to steal the bushel of watches in Philadelphia.

Here we have all the direct evidence of the body of the crime. It rests entirely upon admissions sworn to have been made at such times and places as to render it impossible to show their falsity by any ordinary means of direct proof. They are claimed to have been made under circumstances that may well excite the apprehension of the honest and and upright who may have been so unfortunate as to excite the hatred of a vicious and outlawed villain. Is it to be believed that ten men, possessed of their reason, at the first time of seeing one of these men in several years, and at the first time they ever saw the other, would commit their liberty to their confidence? The king bee of the hive of witnesses foresaw the difficulty he would encounter, from the utter improbability that secrets of such moment would be entrusted to any one; therefore he has attempted to make his story plausible by a pretence that he had deceived them into the belief that he would be their accomplice in burning the Niles depot. Not only so, but he has produced a duplicate of the instrument with which he says the flame was communicated to the building. It was all important, to complete the proof of the *corpus delicti*, to show, 1st, that the edifice was constructed of such material as to render it susceptible of destruction by fire; 2nd, that it was burnt; 3d, that it was probable, or at least possible, that it was accomplished through the agency of an incendiary by

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some means. The means must be adequate to its destruction. The fire could not have been kindled in the cupola at 8 o'clock in the evening, or at any time before the building was closed, because being constructed of pine, which was made still more inflammable by paint, it would have been speedily enveloped in flames. Therefore, if it resulted from a criminal act, the machine must be shown to be such an one as would have retained a fire, slowly burning, without creating a blaze for the space of six hours. The match which has been given in evidence could not have produced the fire, as we have shown from thorough experiments. It was made from a block of whitewood, from 4 to 5 inches in diameter, and a foot in length, in the centre of which a hole was bored with an inch auger lengthwise, to the depth of 8 or 9 inches, which was varnished and filled with camphene; four other holes were bored with an inch and a quarter auger in a circle around the camphene chamber, at or near the bottom of these larger holes, others, half an inch, were bored transversely so as to communicate with the four larger ones. A paper tube, designed for a chimney, of from 1-8 to 1-4 of an inch in diameter, was placed in the centre of the larger holes, and then filled with dry cotton, paper and oakum around these tubes. In this condition, fire was said to have been applied through the transverse or small holes communicating with the cotton in the larger ones, by Gay at his house. It was then placed in a box containing two quarts of camphene, and the box nailed up; in which condition the witness represents that Gay conveyed it from his house and deposited it upon the floor of the cupola. If, as a matter of fact, it was so done, no fire could have remained in the box when it was deposited, for the reason, that the experiments which have been made and proved upon this trial, show, as a fact, that if fire was communicated to the cotton it would not and could not have burned five minutes. In the experiments which have been made, a hole was first charged with oakum tightly packed around the tube, also one with cotton. Neither of them could be made to burn slowly or rapidly. Another was charged with oakum and cotton alternately, loosely packed, with the like result. Neither of them could be made to burn for a moment. Another was charged with cotton saturated with spirits of turpentine; upon applying a lighted candle a momentary blaze only was produced; the fire became extinct. Turpentine was then poured into the bottom of the large hole and fired; it burned not to exceed ten minutes, and only until the liquid was consumed, but the saturated cotton did not burn at all. In other words the fire could not be made to advance upwards in the large holes. The varnished chamber was filled with camphene, and confined with black wax such as Gay is said to have used. In less than five minutes the wax began to recede into the chamber, presenting a convex surface. In less than two hours it broke, and the camphene ran out of its chamber upon the floor. This has been shown as a fact.

It is philosophically impossible to accomplish any such thing with this new invented implement, as Gay and these defendants are sworn to have confessed had been done. A fire cannot be made to burn unless the chamber in which it is kindled is larger than the chimney.—In other words you must have what in common parlance is called a

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draught. This cannot be had unless your chimney is smaller than the space for the fire. There must be a compression of the air. This match is not constructed upon that plan. On the contrary, in a moment after applying the fire at the bottom of the large hole, the cotton will be burned for the space of an inch. This constitutes the chamber for the fire. The transverse hole being less than half its size, is the natural and only chimney through which the air, obeying its own law, will pass. It cannot be made to pass upwards through the small tube placed in the centre of the large holes; but these tubes serve the same purpose as the aperture which is left in a stove to be covered by a damper. Like it, the tube will admit air, which will increase the force of the draught in the opposite direction.

There is still another and a greater absurdity in the suggestion that such a block being charged and fired, should be placed in a box from which the air was excluded, and continue to burn. The exclusion of the air would extinguish the fire in a moment, because the presence of atmospheric air or oxygen is as essential to combustion as to respiration.

The material of which it was made was whitewood, therefore not capable of retaining penetrating liquids. The varnish put upon the camphene chamber would not render it impervious, because both camphene and turpentine are powerful solvents. If varnish or paint becomes hardened, this material is invariably used to convert it into a liquid state. It has also been shown as a fact, that one of these chambers is not capable of retaining it: that in the short space of four to six hours the block will absorb the camphene. It is thus demonstrated as a matter of fact and science, that the story of the confessions as to the origin of the fire, and the means by which it is said to have been communicated, is a mere fabrication.

Milton describes the mother of our race sleeping in the bower of Eden, and Satan

> "Squat like a toad at the ear of Eve,
> Assaying by his devilish art to reach
> The organs of her fancy, and with them forge
> Illusions as he list. ∴ ∴ ∴
> Him, thus intent, Ithuriel with his spear
> Touched lightly; for no falsehood can endure
> Touch of celestial temper, but returns
> Of force to its own likeness; up he starts
> Discovered and surprised"—Satan in "propria persona."

As Ithuriel's spear of truth restored the devil from the shape of a toad, so the truth of science has divested these matches of the false and destructive character with which they have been invested, whispering conspiracy and arson in the ear of the sleeping agents of this corporation, and has revealed the hand and philosophic mind of Phelps.

If the evidence of confessions is true in all its details, you will find that it all speaks to that count of the indictment that describes the offence to be advising and procuring Gay to commit the overt and incendiary act, which makes them accessory thereto before the fact. He was indicted, but before a jury was empannelled, died in jail, and his guilt has never been established in the only legal manner it could be by a trial and verdict against him. I respectfully submit to your hon-

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or, as a legal proposition, that no tribunal has power, under the laws of this State, to try those who are said to have incited this act, under the present form of the indictment, until he has been tried. The count to which the evidence is directed, does not state the hiring and procurement as a substantive act, but simply as accessorial. Wherefore, the very thing they are charged with having procured, must be manifested to be true in a legal manner, before they can be put upon a defence. The statute of this State has changed the rule of the common law, by enacting that accessories before the fact to felony, may be indicted and convicted together with the principal, or after his conviction, or may be indicted and convicted of a substantive felony. This gives the public prosecutor an election of either one of three modes of trial. First he may do it jointly with the principal; second, after the principal shall have been convicted, either of which could be done at the common law; third, he may charge the act as a substantive or independent offence. This is authorized by the statute alone, not having been the practice before it was enacted. The law is plain, and leaves no room for debate or construction. It is a transcript of an English statute, passed in the seventh year of the reign of George IV, under which it has been decided that if an accessory be indicted alone, before the conviction of the principal, the offence must be stated in substantive language, and not made dependant. 1. Russell on Crimes, 40; Reg vs. Ashmall, 9 Carr and Payne, 287—38 E. C. 97; R. S. of Michigan, 1846. In the present case the prisoners are jointly indicted with the principal, and charged with simple accessorial acts in the usual common law form and not substantively. Arch. Pl. 649. The indictment was drawn after the first of the three enumerated methods of trial, and the decease of the principal, renders it impossible to carry it forward to a verdict in that manner.

The crime of Arson in the burning of the Detroit depot, charged upon these defendants, is the result of a conspiracy between Phelps, Lake and Wescott.

These three witnesses were in combination to accomplish one single common purpose—the conviction of these defendants. Each one of them has sworn upon this trial, that he had been laboring, watching, lying and deceiving, in furtherance of that object. They have themselves established the fact, that there was a community of design, feeling and labor between them. There will be this difference only between the counsel for the prosecution and myself. They will labor to convince you that the end these witnesses sought, and now seek to accomplish, was lawful; and that, therefore, the means employed by them are excusable; in other words, that the end justifies the means. We believe that their own conduct, their unnatural and inconsistent statements alone, show that both were wicked and corrupt. If the material facts sworn to by them are untrue, it makes the purpose for which they were associated, guilty and unlawful. The conduct of Phelps as to the admissions which, he says, were made to him by Gay, is not consistent with his truth and honesty. If such a confession was made in the month of November, while the smoke was yet ascending from the ruins of the depot, to an honest man, he would not have withheld the fact from those who were deeply interested in knowing it.

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If true, would he not have proceeded at once to some officer of the company and disclosed it? The time he caused this intelligence to be communicated to an agent, is not known; but from his own confession instead of directly approaching the Superintendant, he told his story to Mr. Bates, truly believing that it would be reported by him to those whose confidence he desired to gain. Such a course is never adopted as a medium of conveying truth; but it is the indirect and artful device of a deceiver, who endeavors to impose upon another as true, that which is false. Phelps and Lake both say that they saw Gay on the 24th of February at his house, and that he exhibited to them a match in his chamber, which was represented to be like the one used in burning the old depot, and stated the amount he had received. The same thing was again seen on the evening of the 9th of April. If this transaction is divested of the explanation with which Phelps has surrounded it, Gay does not appear to be ready or willing to exhibit it. Mr. Van Arman was unable to get a sight of it on the two first occasions that he went to his house, and on the evening of the 9th, not until after a long private conversation had been held between Phelps and Gay, and not until after they had been above stairs in a bed-room, to make arrangements for its exhibition. He is therefore shown to have been careful, and extremely reluctant to allow the man so highly recommended to him, to see or know anything that could, by possibility, be used to his injury. Why was he so much more reserved and cautious in the presence of this man, who had been so frank with him as to have tendered to him a profitable partnership, if a few days prior to that he had not only shown the same thing without solicitation to Lake, the first time he had ever seen him, but related all that he is represented to have said in his hearing? There is but one reasonable explanation of it, which is, that P. had himself originated the scheme of burning the depot at Niles, and also the new one in this city, when it should be rebuilt, and represented to Gay that he had friends at Michigan Centre who would pay them for doing it. Keeping his real intentions in the dark, he did not advise him that it was a wicked plan elaborated by himself, upon which he was to predicate a false charge upon those pretended friends. Having thus deluded his dupe, and induced him to join in the commission of the contemplated arsons, and either to fire the new depot at Detroit, or aid him in doing it, he or his associate, must have conveyed the match to the house, not in the month of February, but in the first part of April. This was after he had borrowed the augers and employed Lake—after they were found shut up in the log-house in Sylvan, upon the day that Metcalf found the door fastened—after Cowden found one of them shut up in the same house, surrounded with augers, saws, timbers, shavings and pieces of board. One or both of them carried the work of their own hands to Detroit, after they had succeeded in deceiving Gay, by assuring him that if he would become their accomplice, he would be paid such a sum as they may have fixed upon. Then it was that they called upon Van Arman and Clark to go there with them as friends and see what they had seen. On the evening of the 1st day of April, one of these gentlemen, the leading counsel upon the other side of this case, disguised, possessed of the means of deception, went with Phelps, and was

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introduced by him as his friend. But he saw not that which had been promised he should see. They went a second time, upon the evening of the 8th, and Phelps talked privately, long and earnestly with Gay; but he was obstinate; he could not be persuaded to permit the evidence of the contemplated crime to be seen in his house, even by the friend of his associate. They went again upon the evening of the 9th, and exhibited what they termed their well executed counterfeit money.—Another private interview took place, and to some questions put by Phelps to Gay, to use the language of Van Arman, he replied, "You don't suppose I am such a d——d fool as to place myself in any man's hands, do you?" This is the language of the man who, the first time he met this reformed felon, lately from the Penitentiary, in a public saloon, placed himself in his power by reciting the details of a crime of which he had never been suspected.

And again upon the 24th of February, upon meeting Lake, the first time he ever saw him, as soon as he was introduced to him, placed himself in his hands by repeating the same to him. That part of the conversation at the house about burning depots, which was heard by Clark and Van Arman, is perfectly consonant with the theory of the plan arranged by Phelps. If it be true that he originated the scheme of charging fictitious crimes upon enemies for the benefit of friends, and if those to which he has testified against the defendants in this cause are mere fictions, when in the presence of those he wished to convince they were really contemplated, he would of course take occasion to speak of and about them, in talking with the man he had fixed upon to apply the torch at Detroit.

The extent of his plan had been settled; he had already advised his employers that the defendants aimed at the destruction of their buildings at Niles and Detroit, if possible, at the same time. Hence the necessity for him to deceive some one at one of the places into the apparent relation of an accomplice. This, being accomplished, created the necessity for still further deception upon the already deluded one. His conspiracy could not be executed until there was some confirmation of his strange and incredible developments. Therein lies the secret of the visit to Gay's house on the 1st, the 8th and the 9th of April.

If Gay had been guilty, he never would have been arrested upon this indictment, but he would have beeen used as a witness against these defendants. But Phelps, knowing better than all others the real truth, could find no safety unless he was jointly indicted with those who are now upon trial.

He swears that Fitch stated to him that he had furnished and delivered, and Gay that he had received two matches. How did they disappear from Gay's house? He had never used one of them. Why were they not found upon his arrest on the 19th of April? But ten days prior to that on the evening of the 9th, it had been seen in a band box, carefully packed in shavings, indicating that it had thus been conveyed there. When and by whom was it removed? Mr. Titus, who swears that he arrested Gay at his own house, says that his premises were searched at that time, and again subsequently on the same day. But it could not be found. This was on Saturday. Phelps was not there. On the succeeding Monday they renewed the search

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with his assistance, and without success. It was found under a plank sidewalk in one of the public streets of the city, under circumstances showing that it could not have been there many hours. It was as free from filth as when first finished. It has no stain or the appearance of having been wet. Gay could not have placed it there from any fear of its being discovered, for if he had received any intimation of impending danger, he would have removed it to some more distant and secure place. Phelps foresaw this seeming impropriety, and that it was important that a thing so strongly corroborative should not be wanting in the proof. He put it there. He that hides can find. To raise a presumption that it was a proper place, one likely to be selected in preference to any other, he has sworn that Gay told him that he could hide under his side-walk all that ten men could steal. But the counsel attempt to explain the fruitless search by proving that after Gay was taken into custody, he talked privately with his wife. If she received any directions from him to dispose of such a thing, think you she would have put it in the street or in the fire? Where were the bandbox and the shavings that were seen on the evening of the 9th? Not at Gay's, because they were not found. When and by whom were they taken from there? Not by Phelps, because his memory is treacherous upon the subject. When were they carried there, and by whom? Not at the same time on the evening of the 9th, that the two corroborating witnesses went with him; because they say that Phelps did not, and could not have carried them without their knowledge. It was no part of his scheme that they should know it. Lake was there that same evening. Did he carry the bandbox and its contents there? Not to the knowledge of the two gentlemen referred to. But how should they know whether he carried them or not? He did not accompany them, either in going there or returning; therefore he might have carried them either before or after their arrival. Phelps went out of the house with Gay.

It is certain that he went for or after something. They then went up stairs to a bed-room. From thence they came down stairs and separated. Phelps then invited his two friends to ascend the stairs with him, and they found a bandbox standing under a bed. They opened it and saw its contents, and were convinced that he had told them the truth. Soon after they left. But where was Lake? Not with them for they would have sworn so. Why did he remain? Not because he was a friend of the family, for he had never seen any one of his household before, and Gay but once.

Phelps and Wescott have denied any acquaintance with each other, until the last part of the month of February. It is hardly possible that they should both of them be engaged in the same pursuit, without a mutual knowledge of the fact. They must have known each other, for Wm. B. Laycock says that after they had retired at his house, Mrs. Phelps asked her husband if he was going to see Fitch the next day, and if he could do as he had calculated to do; to which he replied, if Wescott proved true and would do as he had agreed, they would come a good drive. This was early in the month of January, and clearly shows that an agreement had been made between him and the person of whom they spoke. If his purpose was lawful, and if Fitch had al-

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ready placed himself in his power, why did he, when carried to his residence by Laycock, make a false pretence of business?

If Phelps and Wescott were already possessed, by the admissions of the defendants, of all they had done, why did Lake become connected with them? Not because his relations to the defendants would enable him to elicit any new facts from those who had confessed the burning of the depot to others, for they had already furnished sufficient evidence for their conviction, if it was true. Not because they suspected others to whose confidence they could not succeed, for Lake had no acquaintance with any of them, and was ignorant of the geography of the places were they lived.

He was, therefore, not possessed of any facilities to approach any of the prisoners. He swears he was introduced to Fitch on the 25th of February, and was told by him about Wescott's being there as a spy, and that Goodwin had shown a letter from Brooks from which it was learned. If that statement was made it was not founded upon truth, also that Dixon had asked him that day to talk. He inquired, "if it would be safe for him to remain there," and was informed "if his business was to buy wheat it would, but if he was a spy he had better leave." If any such statement was made it was not true, for Mr. Dixon has sworn to all that transpired during his stay at the Centre, and he makes no allusion to any such conversation. It therefore raises an issue of veracity between Phelps and Lake on the one side, and Goodwin and Dixon on the other. The defendants said that the reason they did not burn the depots themselves was that they were too well known—they had rather hire it done. Where was it they were so well acquainted? Not at Detroit, for none of them had ever lived there. Not at Niles, for none of them are shown to have ever seen that place, or to have been acquainted with one of its citizens. Why did the defendants choose to fire the depot at Jackson, rather than pay for doing it? Phelps says, because it was so near their homes. They were not strangers in that vicinity, yet the reason assigned for hiring him was that they were too well known at a place they had never seen.

These witnesses have not heeded the maxim of Seneca, that "The light stucco of the ovtside imposes upon few; Truth, on whatever side it is viewed, is always the same; Falsehood has no consistence; a lie is transparent; a little attention enables us to see ihrough it." There is another consideration that is conclusive evidence of their unlawful combination, which is, that *Phelps and Lake made the matches.*

This conclusion follows from the following facts:

1st. Because Phelps is the man who professes first to have seen them, and it is perfectly consistent with their character and conduct, that they should have made them. They had a motive much more likely to lead to their construction than any of those upon whom they charge their invention. By Phelps' own confession, he had a desire to "lay Fitch out." *Revenge,* the strongest passion of the heart when it rules, was his great and primary object—employment, and the hope of gaining five hundred dollars reward for each one he should implicate furnished a second motive.

2nd. All the extraneous facts and circumstances developed upon the trial, fortify this conclusion. Why did Phelps seek and employ Lake?

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Not because they hated and despised each other. Entertaining inimical feelings towards him, he would not seek his aid in a fair and honest enterprise; he would have sought the assistance of some one to corroborate him who was a friend, and in whom he had confidence. It was not because of any relations subsisting between Lake and the defendants, for to them he was an utter stranger. The object, then, must have been one resting in their own depraved purposes—one so corrupt that it made them forgetful of past injuries, in hopes of the reward that should be made more certain by their united efforts.

3rd. They are shown to have been possessed of augers corresponding in size with the holes in the match. The reason assigned for borrowing them, (to mend a buggy) was false; the largest one would never be used for such a purpose.

4th. Lake was found shut up in the house by Metcalf. There must have been some object in taking precautions to prevent intrusion. If engaged in an honest employment, he had nothing to fear from the unexpected visit of any person. In the month of March he was found in the same situation by Cowden, surrounded by all the evidence of a worker of wood—the same augers, or those of the same size, a saw, a plane, wood from the railroad, a basket filled with shavings, and pieces of board, spoke the employment in which he had been engaged. Having finished the matches, he was engaged in writing the history of their future criminal agency.

5th. A piece of timber was found in the manger of the stable or hovel which bears marks indicating that it came from a cattle-guard in the railroad. This timber was placed there while Phelps lived upon the premises; because it could not have been put there after Metcalf moved on the farm, without leaving some trace of the fact, either by tracks about the stable or manger, or in the altered appearance of its contents; for the hay in the manger could not have been disturbed without removing the filth upon its surface.

6th.—Phelps was seen at the manger on the evening of the 10th of April. He was there for some purpose, which he has not attempted to explain. We can only determine his object by the traces he has left behind him. The hay was there properly; it was where it should be; but the block could only be there as the result of accident or design. It was not carried there by Metcalf, nor did he ever have any timber of that description on any part of his farm. No one has occupied the place since he left it in the first part of April, except the young man who has been sworn, and whose statement is conclusive of the fact that the timber must have been where it was found on the 2d day of July, before he moved into the house.

7th.—It is shown by all the testimony upon both sides, that white wood timber of suitable dimensions was upon the railroad near to his residence. No lumber or timber from which such matches could be fabricated, is shown to have been in market at any place adjacent to the residence of any of the defendants. The isolated position of his residence enabled him to construct them without danger of being surprised. Living as he was, in a community of farmers, his house some distance from others, secrecy was certain unless he was extremely careless.

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8th.—They admit the possession of the match used at Niles, and fail to show that it was delivered to them by the persons from whom they profess to have received it. The haste with which the arson at that place was executed, which was at his own instance; the circuitous route taken by them in going from Sylvan to Michigan Centre; the presence of Corwin and Myers at Filley's in the evening, procured by him fraudulently; his errand to Cady's, which was a pretence and false token; he made no effort to accomplish the object for which he professes to have gone there. We are therefore at liberty to supply such design as legitimately flows from his conduct. Mr. Clark had determined to bring him to the execution of his pretended agency for the defendants, and had apprised him that upon that day he would send a man to watch their movements in disguise. It therefore became necessary for him to get a match in some convenient place upon Filley's premises. Faulkner could not get admission at Fitch's residence; nor could Lake or Phelps. It would not answer to have the match deposited at Filley's house, unless some of the defendants could be induced to go there in the evening. Hence, Lake left the buggy a mile south of Leoni, went across the fields to a designated place where the road leading to Michigan Centre crosses the railroad, there to await the arrival of Phelps, he having gone to Leoni to arrange with such of the defendants as he could, to go to the Centre upon pretence of rolling ten pins.

10th.—Filley was not at home on their arrival at the Centre; therefore could not have been advised by Phelps of his intention to go to Niles. Not being advised of the fact, he could not have informed Fitch. Lake does not pretend that he saw the latter until evening.—Filley could not have told Phelps to come upon the night of the 11th, and he would furnish him off to Niles. It is utterly impossible that Phelps and Filley should have seen each other upon that day, because the latter went with Allen and Kane immediately after noon upon a hunting excursion; and when they left, there were no strangers about the house, as they both testify. Phelps and Lake did not arrive at the Centre until after they had gone. It is not true, as stated by Phelps, that he did not get out of his buggy on that occasion; for Mrs. Toll swears that soon after he left Leoni, she went to the residence of Mr. Fitch, and upon her arrival his horse was standing near the hotel, where it remained about half an hour, after which time he came out and drove away. Lake says that Filley was at home all the afternoon; that he went upon the pond fishing towards night with some men, to get them out of the way. This furnishes another evidence that these matches were made by Phelps and Lake. The theory of the defence is, that upon Filley's return with Kane, just before evening, Lake, pretending that he had a bundle that he desired to put in a safe place, induced Filley to allow him to place it in the little room that has been spoken of, and which was occupied for storing liquors and baggage—that the design contemplated that Filley should be the man who in the evening, after all the defendants whose attendance Phelps should be able to procure had assembled, should, at his request, to be made privately, open the door and remove this box, which was enveloped in a handkerchief or cloth, and thus by discharging a duty common to a

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landlord, without suspecting the guilty intentions of his guests, furnish evidence to deprive him of his liberty. But Lake got more than he bargained for. Filley left with the key in his pocket. Lake followed him, and intimated a possibility that he might wish to leave, as the only possible pretence on which he could gain possession of the key. Why did this sick man, so debilitated that his associate was forced to leave him in one of Filley's beds, choose to defer this intimation, and instead of advising his intended victim at the house that he might wish to leave before his return, walk a distance of half a mile to the pond before doing it? There is but one apparent and logical reason for his so doing. He having failed to furnish any reason, it remains for us to give one that shall be fair, and rise legitimately from his acts. It could not have been from a desire to see the strangers who were hanging about there started upon their excursion beyond the prospect of their return; nor could it have been the want of and a disposition to take exercise, for his ride from Sylvan had furnished too much of that, and he remained for rest. The only remaining conclusion is, that considerations of prudence or caution controlled him. It was important to the success of their plan, that he should have exclusive control of the key. If he had expressed his intention to leave, to Filley at the house, some one of the family would have received it, and he would have been forced to apply, possibly to Mrs. Filley, to unlock the door and deliver his bundle, which would have proved a catastrophe; therefore, he wisely concluded to accompany Filley, and upon the point of his leaving with his fishing boat, he would be sure to get possession of the only remaining thing essential to his success. He knew that the room contained nothing so valuable as to create any objection to his having the means of access thereto. This conclusion is strengthened from the fact that from his own testimony he makes Filley lock the door, after the match was put in the room, and put the key in his pocket. No one, other than himself, besides Filley, Woodward and the boy, went to the pond, nor was any one found there to return; hence he of all the persons present was the only one who went back to the tavern; therefore he must have carried the key back with him.

11th.—Filley could not have placed the match where it was found in the evening at the time he is represented to have done so, because he was two or three miles from the place, in company with Allen and Kane. If he had been where it was possible for him to do so, it is improbable and utterly inconsistent to believe that he would have done it, for by so doing he would have increased the chances of detection to such a degree as to render it almost certain. At the barn from whence Lake says he removed it, it could have been delivered without the least danger of being observed by any one. The place to which he is said to have removed it, was sure to give the act of deliverance the utmost publicity; for you will bear in mind that it was a bar-room, open for the reception of whoever might choose to enter it. It was the most public place or room in the village, frequented at all times by those who are not suspected of an association or sympathy with the defendants. Such an insane act would not make it possible merely, but almost certain that this terrible evidence of guilt would be seen

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and noticed, as the proof shows it was. And herein lies the secret of Hay's being upon trial—whose only crime was the misfortune of returning from an eastern tour, whither he had been on a visit to his friends, just in time to be present to witness the scene of that evening. They would not only be liable to be surprised by those who were accustomed to spend their evenings there, but by those of his own household. He is said by Lake to have brought the match in, and nailed it up in a box; in doing which he took the precaution to direct the members of his family to some part of the house from which they could not see it or them. How much more reasonable that he should have done this at the barn, where he would have been removed not only beyond the presence of his family, but beyond the prospect of surprise from any one. There he might have made all necessary dispositions for its conveyance to the point of its destination, and from thence it could have been taken. No suggestion was made that it should be carried into the house by those who were to use it, and the conduct of Filley, as it has been represented, in seeking to avoid the presence of the inmates of his house, shows that he had a desire to keep it from their knowledge. But the means adopted would have the tendency to awaken suspicion, or at least curiosity, to such an extent as would have directed watchful eyes to this little room. The space intervening between the house and the barn is not to exceed one hundred feet; the latter is about an equal distance from the street; therefore he could have gained nothing either in time or security. If it is true that he knew what was to be done that evening, why was he absent? If he was so deeply interested in the destruction of the property of the railroad, as to have importuned Phelps so frequently to fire the Niles depot, and urged him to be expeditious, it can hardly be believed that upon this time of all times, when definite measures were to be adopted, any consideration would lead him to be gone, unless something unforeseen and unsuspected had intervened to render his absence necessary to avoid detection. Did any such occurrence take place? Lake says that considerations of prudence and caution were the occasion of his leaving, with a view of removing persons from whose eyes they wished to cover that which was to be enacted. In this he is contradicted by the person who says that he alone accompanied Filley. This person was not at or near the tavern upon that day; consequently such a motive could not have existed as to him.—Who suggested this course? Phelps says that he was informed by Fitch, that it was at his instance. This could not have been true, because Lake swears that Filley was constantly present about his own house during the whole afternoon, and that he did not see the man whose name is invoked to give credit to this lie, until he entered the bar-room in the evening. He was absent during the whole day, as shown by Amanda, his adopted daughter; and after his return, he left his house but once, near nine o'clock in the evening, and then for the space of about ten minutes. He was attracted to the tavern by an unusual noise and commotion. It is true that this reason emanates from the evidence of the defence; and it is equally true that it is not a fabrication arising from a necessity to supply a lawful purpose in going there; because neither of the two witnessss for the prosecution

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who testify to this transaction pretend to have seen him upon that day, or to have communicated to him in person the fact that they would be there at that time for any purpose, or that they had in any manner notified him of such a design; so that his presence upon that occasion was purely accidental, and not in pursuance of any pre-existing appointment.

12th.—If Fitch was the principal instigator of the scheme, why was no effort made by Phelps or his satellite to see him on their arrival at the Centre upon that day? It does not appear that they made even an inquiry for him. Why was the possession of the twin oxen, a condition which had always heretofore been a *sine qui non* with him, forgotten by Phelps at that time? When and where did he receive directions for charging and regulating the period of time the match should burn? Not at the time he received it, for Mr. Faulkner would at least have heard some word that would indicate the fact. Not at any other interview which he had with them, for he has stated all that transpired between them in any and all prior conversations.

Phelps and Lake are convicted of falsehood as to the route they pretend to have traveled in going from Sylvan to Michigan Centre on the 11th of April, by six witnesses, who have declared that Phelps drove into the village of Leoni from the south, not far from the hour of ten o'clock on that day. It is not possible that they should be mistaken as to the date, because they all refer to the circumstance of a litigated suit; and if the time was not positively remembered and correctly stated the docket of the proceedings would have been here to correct the date.

They are shown to have equally misrepresented the truth, in denying that they separated before their arrival at the Centre, for Lake was seen by three persons to leave the buggy, taking therefrom a bundle wrapped in red cloth or handkerchief, and cross the field with it under his arm to a road not much frequented by travelers, but leading to the place where the last crowning act of the fraud and deception was to be enacted in the evening. Before he had advanced half a mile, he was met by a farmer of that neighborhood; and was seen by him to change his bundle from one arm to the other. Its dimensions and shape was seen by this man and remembered. He fixes the date from the same circumstance.

So that the evidence of those who saw one of them at Leoni, and of those who saw the other in the field and road, concurs to show that two men must have separated near Beeman's house.

The only attempt that has been made to controvert the truth of those witnesses, was first, by recalling the men whom it convicted of perjury. They would of course deny the occurrence, because they had before sworn that they both proceeded by the most direct road without leaving their buggy. Second, by charging ten witnesses with deliberate perjury, and inviting this jury to view the locality, promising them that they should find confirmation of the charge. You saw what must have been apparent to any man who had eyes, that at the distance of twenty rods, upon a level surface, you could see that which had been described. You cannot find a sportsman who could not see a red or white object three inches square, at the distance of forty

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rods, so plainly as to be able to send a rifle ball to its centre. It must have been Lake who was seen on that occasion. If it had been some other person, the length of time that has intervened since the proof was made, would have enabled some one of the thousand agents who have been engaged by the Railroad Company to discover the fact and the person. They admit that they passed the premises at the time they were actually seen there, but represent that they proceeded together without stopping, traveling upon the same road upon which the footman was met. If it be true, where could they have concealed themselves, their horse and buggy, to avoid meeting Taylor? It is not possible that they could have passed on the road near the saw mill without being seen by him.

Their statements made when first and last examined, are in plain contradiction. Lake distinctly and repeatedly answered at first, that they did not pass a mill, and that they crossed the railroad at least twice in going from Cady's, and arrived at the Centre upon the north side of it. This was before the defence was made. When recalled, he swears as distinctly that they did pass a saw mill; that they arrived upon the south side, and did not cross the railroad until they were opposite the hotel. Phelps was equally distinct in his recollection that they went by the most direct road. But when driven to expedients by those who saw and knew him, he has changed his course to the most indirect path that could have been selected.

Why should they have selected their way, leading them a part of the distance over rough and unfrequented wagon roads? If Lake was as feeble and debilitated as they say he was, some strong reason must have existed to control them in traveling through such places as would greatly add to his fatigue, increase the distance, and require a longer space of time, and which could have been avoided by going upon a straight public highway. It could not have been the result of accident, for one of them was familiar with the localities and the avenues leading to them.

They have not supplied any reason. Their motive therefore must have been dishonest; and it can only be reached as a deduction from the concomitant facts and circumstances; from which it is evident that Lake did leave his associate, as we affirm—that the latter might ascertain whether he could induce any of his intended victims, by falsehood and deceit, to go where Faulkner was to be in the evening, that he might witness a meeting in secret conclave, assembled for the delivery of a fire machine. The bundle was not deposited in the baggage-room until after they had met and held a conference of half an hour at the tavern, in the absence of its owner.

Thus the whole history of the match that was used at Niles shows the improbability of its having been made by the defendants to whom it is attributed; and if not made by them, it must have been done by one or both of the witnesses who used it. If the match was the invention of Lake and Phelps, it would be necessary to the success of their plan that it should be conveyed and deposited upon the premises of such one of the defendants as they had made the principal instigator and procurer of the contemplated arson. This they could not accomplish, because the relation of accomplice did not exist between him

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and them. If it had, how easy and how much more likely, in their desire to lay him out, that they should have gone to his barn, half a mile from his residence, standing remote from the public highway, and equally so from any house. It had two open sheds, not secured by lock, which were accessible to them. There they might have secreted their drayman from Marshall, beyond the possibility of his presence being known, where he could have heard every thing that was said and seen every thing that was done. Moreover, the barn is the place where it is said by Phelps that Fitch kept his spurious coin and the dyes for making it. If this be true, is it not probable that he would have kept his blocks, machines and combustible materials in the same place, or in one furnishing equal security? They could not place it in or near the dwelling of the principal object of their vengeance, in the absence of such relations of friendship as would exist between men laboring for the commission of the same offence. But if the feelings of friendship arising from criminal associations had existed, they could and would have done so; for the defendants who are claimed to have been in the secret would have chosen such a place on account of the privacy it promised. But they regarded each other with feelings of enmity, and Phelps could not even gain admission to his fireside.—Therefore the hotel, a place open to every one, no matter how pure, or how black and depraved his character may be, was the only place left where they could practice such a deception. The only pretext upon which they could procure the presence of any one of these defendants, was that adopted by Phelps, of inducing them to go there for recreation in the ball alley, himself defraying the expenses incident thereto. Having invited them there for such a purpose, he could not well lead them to a barn or to any place other than the tavern and alley; but if they had meditated the destruction of the depot at Niles, believing him to be their coadjutor, they would have sooner gone to the field or woods, or to a barn or hovel.

Why did Phelps attempt to prevent those who were in the room from leaving immediately after Corwin went out with the box? If what he had said was true, so far from attempting to prevent others from seeing or noticing what was carried to his buggy, he would rather have connived at the gratification of their curiosity. But if one of them furnished the key to Corwin, as they must have done, it was undoubtedly represented to him that they wished to keep the box from the sight of those who were there, and gave a false account of its contents. Hence, to keep up the deception, and elude any suspicions that might otherwise arise with Corwin, he made a sham resistance to the egress of others. Why should Corwin and Myers have gone to the Centre for the purpose of aiding in fitting them out, when if they are to be believed, everything had been made ready? They could have not done anything for there was nothing to be done.

The payment of money he says was refused, upon the admitted reason that there had already been a certain amount advanced, and that Fitch would pay no more unless they were successful in accomplishing the destruction of the building. A certain amount is alleged to have been paid on the 4th of March—some eight or ten dollars to Lake, and a small amount to himself. But when the former relates to the

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occurrence of that day, swearing merely from his recollections of the contents of that diary, which was the conjoint production of both of them, he absolutely denies that he had received any such sum of money at that or any other time. It is hard to remember that which never had any existence, although it may have been committed to writing. The manner in which this history of posthumous events and crimes was written, is not calculated to impress his mind with all the incidents of which it was composed. When they were both present, the elder and the master villain made the record; when separated, each for himself noted the fact that he was at a given place, at a given time, with some one or two of the defendants, and with so much of truth, blended as much of fiction as their own corrupt and depraved minds could invent. At their next meeting, Phelps transcribed it so as to constitute a continuous story, and from this diary of falsehood they both pretend to swear. Phelps retained the manuscript of their joint narrative, when his pupil should have been engaged in its study. He says that Fitch advised them "to take the box in his buggy, go back to Grass Lake, one stay there, the other go farther east and get on the morning train at different places." Is this true? If so, it presents a strange coincidence; that was the point of departure fixed upon by him and Mr. Clark. It is singular indeed, that he should be directed by the man who he was deceiving, to the very spot to which he was obliged to return from a necessity created by his own act. He had borrowed a horse at that place, and of course, was obliged to return it. He also says he had a private conversation with Fitch in the evening, in which he makes the latter to say that he had been informed by Filley that he, Phelps, was going to Niles that night and states to him that he had a match all ready for him, that it was made upon the same principle as the one he had furnished Gay, and it would not fail, as they had tried it several times. This was said aside from the others. Is it possible that he should have been taken aside by Mr. Fitch without the knowledge of their own witness who was there to see and hear—and is it reasonable to believe that a man of his intelligence would go to such a place to take part in the incipient steps of a crime so fearful in its probable consequences? Would not the presence of a stranger create alarm, and suggest the propriety of postponing the delivery of the box until the stranger should have retired to his lodgings? Prudence certainly would have dictated that an act so momentous, so fraught with danger, should have been delayed until all had absented themselves from the room except those whe were in the secret. And if the defendants in this cause who were there upon that occasion were in guilty league with these travelling witnesses, such precipitation, such foolishness, such madness would not have characterized their conduct. These defendants would not have hazarded the almost certain prospect of detection, by sending them with this instrument uncharged, without the combustible materials essential for its use, with instructions to purchase them in the very village in which they were to burn the building. It was not contemplated that that they should stop for this purpose at any place on their route; therefore Niles could have been the only place where it was designed that they should complete their arrangements.

Another evidence that they were made by these witnesses, is, that it

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could not have been done by any of the defendants. If it had been done by any of them it would have been shown where they got the timber, where they procured the augurs and other implements with which to make them. If Mr. Fitch had been possessed of the requisite tools, such as augur, saw and shave, if he had whitewood of suitable dimensions upon his premises, young Wells, who worked for him, must have known the fact and would have sworn to it. If Filley had owned or been possessed of the requisite tools and material, Woliver, who swears that he worked for him through the whole of last summer and fall, would have proved the fact. If any timber had been used in the construction of his ball alley, from which they could have been made, the carpenters who erected it, and who have been sworn, would have known it. If neither of them owned the necessary tools, and borrowed them for the occasion, the person from whom they were procured, could and would have been a witness to the fact. If any one of them purchased camphene or any material at Jackson, it would be remembered by the merchant of whom they were procured. If one of them had purchased camphene in Detroit in February, he could not have carried it to his house without its being observed, or at least it would have been proved that he had a trunk or box within which it might have been concealed. If they did make them, how does it happen that Phelps, having their confidence, failed to elicit the time and place of their being made and by whom? If any one of them had purchased whitewood timber of suitable dimensions for their construction why has it not been proved? Not because of any lack of perseverance on the part of those who were watching their move ments. No cattle-guards in the vicinity where the defendants lived were made of whitewood; otherwise the fact would have been shown. None of them were ever surprised or seen shut up, surrounded with tools, timber, boards, and shavings. None of *them* was ever known to have traveled to Detroit upon the cars repeatedly, or to have sought private interviews with Gay in the assumed or real character of a villain. Who of all these defendants, is acquainted with the subtle laws of chemistry?—Where did any one of them learn to combine combustible and and explosive substances together with such mathemetical accuracy that the combination should burn ten minutes or forty-eight hours. If the most skillful chemist in this State has been unable to make the invention of Phelps subserve any purpose in communicating fire, and if, by exhausting his scientific skill, he could only make it burn by employing a solution of saltpetre or gunpowder, and if an hour and ten minutes was the greatest length of time he could attain in continuing the fire, what kind of science must it be that continued the fire in Gay's match for six hours? In what university may it be learned? If Dr. Desnoyer' could not produce a flame and cause the fire to communicate to dry pine shavings without the aid of lucifer matches, so placed that the sparks produced from the burning of the cotton, saturated with a solution of salt petre, should ignite them, how could it be possible that they ignorant as they are of science, should be more successful?

Phelps is not only impeached by proof that the interviews in which he says the body of the crime was admitted never occurred, and that most of the conversations that he has sworn to, did not and could not

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have taken place, by contradictions as to threats which he has denied, and as to the intimacy and friendship which he has professed, but there can be no presumption that he was ever reputed or believed to be capable of speaking the truth, by those who have ever known him. Such an overwhelming impeachment of his general character as has been made, was never equaled. Eighty-six respectable men, all living within an average distance of 2 and 1-3 miles of his residence since he left the state prison, have sworn to his infamous character and that he was not to be credited upon oath. Some of them when asked upon the cross examination, have referred to time and parties against whom he had sworn false to their own knowledge. This is not all. Eight gentlemen who were connected with the police or contractors at the prison, have sworn that his character for truth was bad as a convict when in the Penitentiary. Such is the reputation he has earned for himself, an attempt has been made to sustain him by countervailing evidence. Scarcely one of the witnesses who have been called for that purpose, knew anything of the opinions of his neighbors.

The small number who thought they could believe him, because they were acquainted to some extent in his community and had not heard evil spoken of him, when naming the persons with whom they had an acquaintance, and from whose silence they drew their conclusion, mentioned the very men who had solemnly declared to you that they never believed in his veracity, and that it was reputed to be bad. So that they judged from false premises, and their opinion is of no value in estimating his truthfulness. Most of them however lived remote from him, and therefore might well say that so far as they knew what his neighbors said of him, they would not discredit him. He might have called a thousand people from Illinois who could have sworn in truth that they knew nothing against him in the community where he lived. It is a mere evasion of the rule of law. When eighty-six men within a circle of three or four miles, in a community of farmers, all concur in saying that the character of one who lives in their midst is bad it cannot be otherwise.

It was announced in advance, that Phelps would be so strongly corroborated by other witnesses of fair fame, that, although his evidence should be withdrawn from the case, its strength would not be materially impaired. What constitutes a corroboration of that which has been sworn to by a witness? It is proof by another of some of the same facts that have been detailed, or of circumstances, the existence of which can only be consistent or reasonable upon the hypothesis that the principal narrative be true. Any fact or circumstance that may be true, and the main or principal story which it is proposed to support be false, without any apparent collision, contradiction, or inconsistency, does not and cannot strengthen it; and it is not therefore corroborative. Is the fact that Phelps came to the city of Detroit the next day after one of these prisoners arrived there, inconsistent with the falsehood of the story that he has told, about an arrangement between them by which he was to go there to assist in devising some scheme to dispose of three young men whose discretion and fidelity was doubted? Does not the fact of his going to Detroit upon a subsequent day and alone, tend to discredit what he has said of a prior appointment to accompany Fitch for

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such a purpose? May he not have seen the object of his hatred upon the cars, or learned that he had gone there, and followed him to throw himself in his presence, for the very purpose of creating an appearance of intimacy? If he was here upon his false and deceitful promise to assist in getting these young men out of the way, by laying the foundation upon which to charge them with fictitious crimes, why did he, on the next morning after his arrival in the city, leave for Oakland Co., and not to return till near evening? When and where did he hold any conversation or advise with Fitch as to the means to be adopted to close the mouths of the witnesses so much dreaded? Not at the trunk table on his arrival, because Mr. Holden saw and talked with Fitch at the hotel immediately after the cars arrived. Not on the next day, for he was in Oakland County, and Fitch was with Jones all that day, and with Brown at the cotillion party in the evening; not on Friday, because Phelps left the city on the morning of that day for home. Is this the way in which he succeeded to the confidence of this party, by false tokens, deceit, and officious sympathy and assistance? Is it sufficient to prevent his relation of confessions made at that time from falling, that some one swore that he saw him shake hands with Fitch in the city?

Second, he went to Lansing on the 22d of February, ostensibly to procure the passage of a law for his relief, by appropriating moneys to compensate him for what he termed his false and wrongful imprisonment in the penitentiary. To carry the deception out, he says he induced one of the northern members to ask leave to introduce such a bill, and caused the journals containing the notice to be mailed to and circulated among these prisoners. What was he to accomplish by creating an impression that he had a prospect of remuneration for his time while in prison? Did he think that it would commend him to the confidence of those whose ruin he was then seeking to accomplish? If it be true, that negotiations were pending between him and the prisoners, for burning the Niles depot, why should he resort to such a foolish and shallow expedient to blind them as to the real purpose of his visit to Lansing? He swears that he was informed by Farnham that Fitch had gone there and desired him to be ready to go to Niles on his return.—He does not pretend that he had made any definite arrangements at that time, but says that he had not concluded to accept the proposition, and had not given assurances that he would do so. If his object was to impose upon and deceive them as to the real purpose of his going there, why did he not adopt the more plausible pretext of a desire to see Fitch and close the arrangement with him? If it be true that such a proposition had been made to him, why should he attempt to invest his mission with a false motive so simple and ridiculous as to be incapable of misleading any one, no matter how ignorant? Is the bar of the house of representatives in the midst of a session, when all the members were present, such a place as a man of common prudence would attempt to hire another to commit an arson? Is it a place where such a crime would be talked about for half an hour? or would not men who meditated such an act withdraw from the presence of others when discussing and settling its details and the manner of its execution, to some place where they would be unobserved, or at least to some place that would give as-

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surance of secrecy to their interview? He denies that he went there for the purpose of seeing one of the defendants, by saying that his real object was to see Mr. Clark the man who had employed him to supply evidence for the conviction of the prisoners. Had any exigency occurred that rendered such a meeting necessary; or was it for the purpose of approaching and forcing such an ordinary interchange of civilities between himself and one of the parties against whom he was to make evidence, as could not be declined without rudeness; so that in the day of trial and peril he could stand corroborated by proof that he was seen in the legislative hall in familiar and friendly intercourse with Fitch? It is perfectly consistent and reasonable that what he has stated as having been said to him should be false, and that Clark should have seen him sitting by the side of Mr Fitch and occasionally speaking to him for the space of half an hour or longer. It is also perfectly consistent and reasonable, if Phelps was fabricating his proof, that upon learning that the person for whose conviction he was most anxious, was in attendance upon the legislature, he should follow him into the house, approach and speak to him in the presence of his employer, who was there in discharge of his duties as a member from one of the counties of this State. But it is utterly inconststent and unreasonable, if that party had solicited him to engage in a conspiracy to reduce the edifices of the roilroad to ruins, that he should have talked with him, or that he should have ever done anything from which an acquaintance could be inferred, at such a place where they would be seen and attract the notice of that *Honorable Member*, who was then as he has since been known by him, to be in the service of the company. It is useless to pursue this circumstance any further, because it has no connection with, nor can it impart any additional strength to the truth of that which is alleged against the prisoners in this indictment.

The *third* and last incident in this strange and anomalous system of sustaining the truth of his evidence, occurred at the concluding farce that is said to have closed the compact between him and three of these defendants, on the evening of the 11th of April, at Filley's bar-room. A drayman from Marshall was disguised as a wood-chopper in pursuit of labor. He was sent there with instructions to listen, look and remember. What did he see? He saw a door opened, and a box taken and carried out of the room into Phelp's buggy by Corwin. Who furnished him the key? That was not seen by the corroborator. From whence did Corwin come? From the street. Who led him to the street? Phelps. Who directed him to the room containing the box? That was not heard by the drayman. Who took precaution to prevent those who were in the room from passing out to see the box? The drayman says that Phelps held the door. Why did he do this? Was it because he wanted the strangers to see every thing that was done? or was it because he had requested Corwin to take the key and remove the box, concealing it under his coat, representing that he did not wish to have it seen by the stranger, and feared that unless he prevented the egress of those who were in the room, his fraud would be suspected and lead to his detection? He is sustained by the concurring statement of this envoy extraordinary,

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simply as to the fact that the box was taken from the baggage and liquor room and put into the buggy, and as to the fact of the accidental presence of Fitch in the room for a few moments, and two others who were there through the false, deceitful and urgent solicitation of himself. What was said or done by either of the three parties to this indictment, who were there on that evening, and to which Faulkner has sworn, that will give credit to what Phelps swears occurred? He heard nothing said about burning the Niles depot; he heard nothing said about any agreement to pay money or to deliver property; he heard nothing that would indicate that an arrangement which had been long pending between accomplices was then concluded. It is indeed true, that he thinks he heard a remark made by the man whom they called Captain Fitch, "I shall be flush when you get back from Niles," and that he saw the same man standing in the street on the opposite side of the buggy, when the box was put into it; and that near Jackson early the next morning he saw Hay on horseback in his pursuit. Fear of personal violence seems to have occupied his thoughts more than the recollection of that which he had been sent to see and hear. But he is mistaken in his memory of having seen the person who he thinks he saw near the buggy; for he had long before gone to his house. He is moreover mistaken in his belief that he was pursued, as is manifest by direct and unmistakable evidence showing that when Fitch left the bar-room he went directly and immediately to his residence, and did not again leave it that evening, and that the person he supposed to be pursuing him, from whom he apprehended violence, was quietly sleeping in his bed at the distance of four miles from him. He was a perfect stranger to all those whom he saw that evening; therefore it is hardly possible that he should be able to attribute the little he heard said to the person who uttered it in every instance. It is quite as probable, yea more so, that Phelps was the man who spoke of being *flush* when he returned from Niles, as that it was said by any one; for he had been relating the story of his settlement with the State officers, by which he pretended that he had compromised his claim for false imprisonment for two or three thousand dollars. Faulkner was deceived, as it was intended by Phelps that he should be. It was necessary to the success of the meditated fraud that he should see what others saw, and no more. It was necessary that he should not hear the lying story that was told to Corwin by Phelps, as a pretext upon which to induce him to take the key and remove his box from the room, thus to furnish an act for Faulkner to witness; wherefore it was that he led the way out of the room into the street. Is all that has been sworn to by the man in disguise, or any part of it, inconsistent with the fact that none of these prisoners knew what was contained in the box? On the contrary, is it not perfectly in keeping with the conduct of Phelps and Lake, in the fabrication of the entire scheme of the arson at Niles? What possible connection can the occurrences of that evening have with the crime charged in this indictment? They took place about five months after the act for which the prisoners are upon trial, and were searate and distinct from that, and had reference to an offence in a different part of the State and in another jurisdiction, to be accomplished by another person.—

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Their manifestation by proof has no tendency to corroborate the evidence of any witness as to what was done by Gay in the city of Detroit, in November last, or to remove any doubts as to the truth of the admissions that have been sworn to.

If it was true that the burning of the depot at Niles had been proposed to Phelps by the prisoners, and the instrument furnished to him by them, it would not add to the evidence as to the body of the crime at Detroit. The only legitimate effect its proof could have, if proved by other witnesses, would be a simple corroboration of his statement that he succeeded to their confidence through such negotiations. If, however, the facts or circumstances to which a witness who is called to support the evidence of another testifies, are such as may have been fabricated for such a purpose, they must fail to accomplish the object. The question then recurs, first, whether there was a necessity to prove an apparent intimacy between him and the defendants. It would be an unusual occurrence for one man to relate to another with whom he was unacquainted and with whom he did not associate, the fact that he had committed a murder, a larceny, or robbery, of which he had never been suspected. Phelps has had too much experience in criminal proceedings, and has been too long associated with men of vicious habits, not to know that friendship must exist before he could become a confidant. Hence it was that he has sought, followed and intruded upon Mr. Fitch upon two occasions when he has been from home in public places. If he has not done so more than twice, it is because, with all his watchfulness, his zeal and eagerness to precipitate his destruction, and wither the bright prospects, joys and hopes that surrounded his home, he has been unable to find the occasion and the opportunity. If he has never been seen with a smile upon his face (unparalleled except by Dickens' very "Umble" Uriah Heep) shaking hands with any other of the prisoners at Detroit, or in a Legislative hall, it is because they had never been there since he conceived his design. A casual meeting and momentary salutation by taking a hand that is proffered and forced upon you, is not the cordial greeting that betokens friendship. Where that exists, the hospitalities of the fireside and the table are bestowed and received. Intimacy begets cordiality, and is not driven to a public assembly for proof of its existence.

Such is the nature of the corroborative evidence from witnesses whose characters are claimed to be above reproach. It is an inflexible rule of law when a witness is contradicted and proved to have sworn false in any one material part of his testimony, that the whole of it shall be entirely and absolutely rejected by the jury, unless the uncontradicted statements are supported by credible proof.

This rule is so well understood and so familiar that a knowledge of it can hardly be said to be peculiar to the legal profession. Phelps, Lake and Wescott, are all not only contradicted by others and shown to have sworn falsely in their material statements, but in many of them they are self impeached. Upon the rule I have stated you are bound by the law to reject the evidence of each one of them. Therefore the fact that Lake has related some fragments of what has been sworn to by Phelps is no corroboratian of him. The same is true as to each

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one of them. One cannot support the other because they are made incredible by falsehoods. One impeached witness cannot be supported by another. It must be a person whose truth is admitted, or at least not as sailed and destroyed, to prop and sustain such a witness.

It has been proved that Phelps attended upon "stated preachings" at Sylvan. If he should hereafter bow in the humility of self-righteousness his petition should be a paraphrase of "Holy Willie's prayer," celebrated in verse by Scotland's facetious poet. After reciting his deeds in behalf of the Railroad, he should say, "Yet I maun confess" all my evidence is false.

Wescott says he took measures to gain the confidence of the prisoners. He told ten of them that the road was a monopoly—professing to have sustained an injury himself some years past. This is the only means he relates by which he succeeded to their friendship, and through which he became so intimate with them that every thing that men of ordinary prudence would withhold from those with whom they had been upon terms of friendship for years, was disclosed to him because he had declared himself an "anti-monopolist!"

He saw "Fitch very active at the trial of Lester." What does he mean by activity? Not his conversation with the Attorney General in the evening. Is it because he obeyed a legal process from the Court requiring his attendance as a witness? If he was an active partisan of Lester's on his examination, why has not some act in his behalf been proved?

He also says Fitch told him "that he had written to a friend in Chicago to get hand-bills printed, warning people against traveling upon the road; that at least seven hundred, thus warned, went around the Lakes; that such notices would compel them to come to terms." Who was that friend, and where is he, that he has not been a witness? At whose office in Chicago were the hand-bills printed? Who are the seven hundred people who, alarmed by its contents, traveled upon the steamboats? Who, of all the citizens of Chicago, ever saw such a hand-bill? It could not have been posted in a city of thirty thousand inhabitants without being remembered by hundreds; especially by the agents of the corporation who were there to take care of its interests.

This statement comes from the man, who, when he rode in the buggy with Spaulding from Leoni, turned his back to him to show his hatred and contempt of monopolies; and he is the same man who, being invited on that occasion to stay and witness a Thespian exhibition, swears that he was urged to remain and be taken into the *Lodge*, and that on the next morning Fitch told him he had put the brakes on a train of cars that had the lamp broken at the culvert. He also swears, Fitch told him that when the hand car was running forward of the trains the boys secreted themselves in the woods east of Jackson, and after the hand car had passed, slipped obstructions on the track. If such things were done, where are the brakemen and engineer and the conductors of the train? Who, in all the world, is so competent as they to prove it? The track was never molested in the woods to which he refers. If it had been, such a witness would not be left without the strong corroboration that would be furnished by

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the evidence of some one in charge of the trains, to show that the pretended admission referred to a real occurrence.

Again, he makes the same defendant say to him in September last, that they were determined to bring the Company to terms before the State Fair was over, by putting obstructions on the track at five different points—two of them east of his residence, and between there and the place where the Fair was held. If he could succeed in killing from one hundred to one hundred and fifty passengers, he thought it would bring the company to terms. Who were the passengers that were to be killed? His own neighbors, friends and associates. The occasion selected for this fearful destruction of life, was one that was calculated to carry desolation to half the homes in Michigan. He lived but thirty miles from the place where the fair was to be held.—Such proximity would render it certain that a large number of the people of his own county would be on the cars. Yes, himself and one of his most intimate friends were passengers on the first day, his wife and daughter upon the second, and all of them returned upon the third and last day. Which one of these days was to witness such a crime? Was it the first? Then himself and his friend were to be among the victims. Was it the second? If so, he must have contemplated the murder of his wife and that dear daugher, for whom his undying and affectionate regard was manifested in his last hour on earth. Was it the last day? If so, he must have planned the certain destruction of himself, his family and him friends. Who ever heard of such revolting, such deliberate and appalling guilt? Is is possible that men, who have lived honored and respected by the virtuous and good, should, at a single step in vice, sink themselves so low in hopeless infamy?

This falsehood begot the neeessity of another. No attempt was made to throw the cars from the track at either of the five points that had been fixed upon. Why was it not attempted? This witness says that he heard some of the prisoners with Woliver say that spies were sent out to Leoni on the second day. But that would furnish no impediment to the execution of their design at the high embankment east of Francisco's station, which is the place where they contemplated such a destruction of life, or at the point named, west of Jackson. The plot was the father of the explanation. It would not be politic to swear that a scheme so extensive, so well arranged, had been originated to be carried forward to execution at a time when there was to be an unusual accession of passengers, without assigning some reason for their unmolested transit over the road. Therefore it is, that he has attempted to supply a reason for its abandonment. It may or may not be true, that spies were distributed on the traek from Leoni to Michigan Centre, that prevented the success of the project in part. However that may be, is it probable that a plan of such consequence as this is represented to have been, would be deserted at points remote from those that were guarded? One principal motive that he represents to have influenced them in selecting the embankment east of Francisco's, and another west of Jackson, was to create an impression that the feeling of hostility extended beyond their immediate neighborhood. So that any interference for the protection of the track at

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the dry marsh, could not prevent or render more hazardous the gratification of their disposition as to the unprotected places, where they were more anxious to accomplish their wicked purpose. It is probable that such a vast crime would be discussed or hinted at in the presence of one who was in no way associated with them, and who was not permanently settled in their midst—of whose character, habits and discretion they knew nothing—one who was among them under circumstances that made him an object of suspicion?

He was there as a mere adventurer, not engaged in any business, to their knowledge, as he tells you. But his real character and employment was not long left in doubt. Before entering upon this secret service, he carried a letter to the Agent of the State Prison, where, it seems, he had sought and obtained a temporary situation as guard, asking that the place might be kept open for him during the short space of time that he might be engaged for the Railroad Company. The contents of this letter were made known to Mr. Fitch, as he says, soon after; so that his vocation was no secret to those whose confidence he professes to have secured by the utterance of one single sentence, conveying his opinion that this corporation was a monopoly. He does not tell whether this furnished him an immediate passport to their friendship.

How does it happen that he was seen in the fence corners, lurking about private dwellings, admitting himself to be in the employment of the Company, and yet the depository of all that was said and done by men whom he represents as being organized secretly, devising ways and means, not only for the destruction of its property, but the lives of travellers? Is he the man to whom Freeland would volunteer a statement that "we are banded and conspired together for the destruction of the entire Railroad?" and to whom Fitch, Corwin and Filley would immediately repeat the same words? What object could they have had in thus informing the man who was hunting after a lost trunk, that they were conspired and banded together? It is hardly possible that each one of four men should have said in succession—"We are banded and conspired together to destroy the entire Railroad?" What pledge had he given them of his fidelity? When, where, and upon what occasion had he proposed or joined in the commission of any depredation? Was it when Mr. Fitch solicited him to burn four depots, offering him one thousand dollars if he would do so, or two hundred and fifty dollars if he would burn one of them, and he declined, saying that "such things were out of his line?" Was it when he urged Mr. Fitch to go to Detroit with him and be convinced by Brooks that he was still looking after the lost trunk, and was told that his pretence was too false, too shallow to deceive any one? Was it when he solicited him to join the *lodge*, but to give an appearance of his sympathy for the purposes it was to accomplish, turned his back upon Mr. Spaulding in scorn? Was it when, in the month of September, in the presence of Mr. and Mrs. Tull, he denounced Mr. Fitch as a scoundrel, and threatened him with imprisonment in the Penitentiary?

If they were deceived as to his real vocation, and believed him a

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sincere friend, to whom they communicated all that was past and all that was contemplated in future, why did they always close their interviews by a threat of murder, if he betrayed them? But above all, if it be true, as he has declared upon his oath, that immediately upon his advent in their neighborhood they told him every aggression that had been committed upon the Railroad in its minutest details, when, where, and by whom done, and at whose direction, and all the depradations that were meditated, when and where they were to be executed and by whom; and, moreover, that they were conspired together, bound by imposing obligations to secrecy and mutual protection, why was it necessary for him to be guilty of such an indecent outrage as to intrude upon the privacy of a family room at the moment of retirement? Will it be answered that the interests of the public required it? If he tells the truth, there was nothing further for him to learn; for they had told him all that men could desire should remain a profound secret, without requiring that he should become a party to their criminal compact, or take upon himself any obligation to fidelity. But he stands convicted of deliberate and cold blooded perjury in this statement. There is but one way for him to make his words true, and he has the means of doing so, if it can be done. He has sworn that he "broke the nail in the bottom of one picket in the fence on the south side of Fitch's yard, about twenty feet west from his house, and crawled through the open space. We have brought a piece of the fence before you, and it is in evidence. The open space that would be made by turning one of the pickets aside, would be four inches. It has been here several weeks. If he wishes to manifest the truth of that portion of his story, I invite him to do the same thing now. Although the evidence has closed, he shall have the opportunity, because his *veracity* is at stake. It is not necessary to call upon Mr. Lathrop, or to suborn any other person to controvert this testimony, because the witness has sworn to that which is a physical impossibility. He also said that after going through the fence, he advanced to the window of the bed-room upon the first floor, and there saw Mr. and Mrs. Fitch; heard her request him to let the railroad alone, and he replied "they had knocked them to the tune of twenty thousand dollars." They were undressing to retire. How did he know where they were accustomed to sleep? He says his brother-in-law informed him. It is unfortunate for the credibility of this witness, that this portion of his testimony is also a physical impossibility—for the reason that the persons whose presence in the act of retiring is made necessary to its truth, were ia a were in a room in the second story of thehouse and remote from the room where the witness fancies he saw them. If there is any valuei n sincerity, and in a fair and candid demeanor, the evidence of Mr. Fitch's adopted daughter, supported by that of his servant girl, and by Miss Beeman, must controvert this falsehood.

On the 16th of October, he saw Filley pay Williams three dollars on the "Gazelle" matter. He had before received twelve dollars from Filley and ten dollars from Fitch. How does it happen that Filley should pay Williams for that which he had done himself?

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The money could not have been paid for planning the aggression, for the reason that before proceeding far with his testimony he makes Williams admit that Fitch planned it. It could not have been paid for the labor of doing it, because the possibility of his having aided in moving the track is excluded by the evidence of one who was on the spot and helped to forward its execution. Nor could it be in payment for any agency in procuring Price to do it, and remaining at home to be a witness to swear them clear. It could not have been for the use of the iron bar, which Phelps swears he admitted he furnished for the occasion, because the confession and oath of Woliver shows that the design was not preconcerted, but that it originated with him and his associates, that they took an axe that belonged to one of the party, and on their way to the culvert took an iron bar from the mill.

He says in February he saw Fitch in this city, and believed that he was here to procure his assassination; and hence with a view of learning what were the associations of his apprehended assassin, he followed him upon the second day after his arrival in the city; that he saw him with Dows go into the Pantheon Saloon—which was on Thursday; and on the evening of the following Friday, in passing up Jefferson Avenue, he saw them at the corner of Woodward Avenue, and from there followed them till they entered Gay's brothel. Is it true, that an apprehension of danger induced him to dog the tracks of a man who, under such circumstances, he ought to have shunned? Why did he believe that his life was sought, and that his murder was the object that brought his former most *intimate* friend to Detroit? Had he disclosed to any one that which had been entrusted to his confidence? When, and where, and to whom, had he made such a revelation? If he had betrayed their confidence, was it by making an affidavit as to the truth of that to which he has testified? If he had, it was in the custody either of an agent of the Railroad or its attorney. They alone had knowledge of the secret. Hence nothing had transpired to advise the man he so much feared, that he had told any one what he had voluntarily committed to his discretion and integrity. If such a thing had been known, what is the reason that he was not among the dangerous witnesses at Detroit, for the removal of whom the skill, experience and services of Phelps had been solicited? Was it because he believed Fitch was here to procure his immolation, that he invited him to walk arm in arm through the new depot, and sought private interviews with him at his hotel; or did he force his civilities upon him, with the view of fabricating circumstances, such as an apparent intimacy, in furtherance of the details of a combination and arrangement between himself and his coadjutors? But unfortunately for the success of this part of his scheme, there were other eyes than his in this city, at that time; there were other memories, not made oblivious by the lapse of three months. One George W. Brown, as Providence would have it, happened to arrive in Detroit just in time to enable him to raise his voice in the day of peril, to hurl this falsehood back in his face. It is not true, that he followed Fitch from the corner of Jeffer-

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son and Woodward Avenues to Gay's house on Friday evening at dusk; because he took tea at his hotel with Brown. From the dining room they went into Wood's Saloon and smoked their cigars; from thence they went to a jeweler's store, and returned to their hotel at ten o'clock, not having separated in the meantime for a moment. It is not true that he saw him the day before go with Joe Dows into the Pantheon, for the reason that Czar Jones was with him all that day, remembers and has told every place they visited. It is not true that he saw him go to that loathsome den on Thursday or Saturday evenings, because on the former evening he was at a cotillon party with the same Mr. Brown, and upon the latter at the fair in the Firemen's Hall with George Sumner. Besides, he kept a diary of time, place and incident. So that there is no mistake as to time, and no possibility of removing the imputation of a deliberate falsehood.

Thus this witness stands, self-condemned and impeached. After having lived in the neighborhood of the defendants three months, been upon their premises, in his anxiety to make himself a hero, in setting the details of his achievements he has selected positions to which he has sworn, that were impossible—furnishing a refutation of his own story more strongly than could possibly have been done by the declarations of others, in contradiction of what he has stated. He is impeached as to his narrative of occurrences at Detroit, by the evidence of three gentlemen whose statements concurring, show that no time was left unoccupied by Fitch in company with them, within which what he has described could have happened. There is no ray of truth in all that has been said by him, covering a space of two days, to relieve the dark picture it has drawn of his own wickedness. There is no sentiment of respect for the rights of the living, or the memory of the dead, manifested by him, to excite a feeling of commiseration in his behalf. When driven to admit that he had been indicted for a forgery, not satisfied with the effect of a *nolle prosequi* to restore his character, he uttered the unfeeling and shameless lie that Dr. Rankin, who was prosecuting witness against him, was indicted for perjury in swearing to the forgery before Grand Jury. Although the gentleman whose name he attempted to disgrace is in his grave, yet his memory is treasured by a large circle of those who were his friends when living, who had honored and respected him for his many virtues and accomplishment. When this evidence was published, it excited their indignation, sympathies and grief, and the Clerk of the Court in which the indictment was presented against Wescott came forward to rescue the memory of the deceased from unmerited disgrace. Why was the prosecution of this witness for forgery suspended? Not, as he says, because he was persecuted, and that it was conceived in perjury; not because the prosecuting witness had been presented for perjury, and to avoid a conviction had committed suicide; but for the reason that the decease of Rankin removed the witness who knew his guilt—as stated by the Clerk. How does this leave the witness? Is he restored to his fair fame? If Dr. Rankin had been indicted for perjury

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and committed suicide, as he has sworn, he would be relieved from the degradation. But such is not the truth. He died as he had lived, esteemed by all who knew him—so that the basis of Wescott's statements are removed. But his oath remains.

I have thus briefly adverted to some of the most important statements of these three witnesses, and have subjected them to a fair, legal, and, I hope, logical criticism, with a view of establishing the proposition with which I started, that this prosecution is the result of a conspiracy between them. It is not necessary to the existence of such an unlawful relation, that the common design should have been conceived by them all at the same time, or that they should have entered upon the performance of acts for its accomplishment at the same time. Such is not the truth in relation to them. The purpose of subverting the happiness and the liberty of at least one of these defendants, was conceived by Phelps, before he entered upon the service of the Central Railroad Company. It was to be done by false charges against him. To this end, we find him first in the fulfilment of an engagement with the prosecuting officer of the Federal Government of this district. With the view of supplying fictiitous evidence, he went to visit two or three families who were distant relatives of his wife's residing near Fitch. Adopting an apparent lawful excuse for getting upon his premises, he went there. He sought Mr. Fitch, professing a desire to purchase property that he well knew no money could get from him. Why was it that his covetousness seized upon the oxen? For the reason that he knew by observation that they were kept at the barn, half a mile distant from his residence. If he could get Mr. Fitch to go with him to show the oxen, he could seek his opportunity, when he should be unobserved, to deposit spurious coin, and the dies for making it, at some place in his barn. If Fitch was so watchful of him that he could not do so at that time, he could prowl about his premises, watching for the barn doors to be unfastened, or to unfasten them himself with a false key, and leave the evidence of guilt he so much desired to fasten upon him. If his visit had gained nothing but a knowledge of the structure of the barn he would have made an important and the most material advancement in furtherance of his purpose. If he had succeeded, when the counterfeit money was secreted in such a manner and in such a place as to render the allegation that it was there through the agency and act of the owner of the premises, his evidence would have been complete, he would have reported all things ready and called the officers of the law to the search and the arrest. His affection for the cousins of his wife, and his visits to them, would have ceased. But he failed—he was repulsed—he could not induce his intended victim to go with him to the barn. Hence a second visit to another cousin, who went to the Centre with him upon the same pretext. He was repulsed as he had been before, and was told with emphasis that he could not have the cattle at any rate. Then it was, that, foiled and chagrined, he forgot to be prudent, and while riding home with his relative he again uttered his vow of *vengeance*. If he had been successful in the first scheme that he originated, this trial would

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never have transpired. The failure of that scheme has produced the great Railroad Conspiracy! The manner in which he obtained employment from Bates to feret out counterfeiters, remains a secret—but he improved the advantages of his position most successfully. He informed the District Attorney of fictitious crimes, not within the jurisdiction of the Federal Courts, such as Arson and Conspiracies. That officer, trusting in his good faith, hastened to inform the parties interested, as any honest man, and as Phelps, if his relations had been true should and would have done.

From that time, all was merged and centered in the success of the leaven which he had caused to be put into the minds of the officers of the Railroad Company. That it worked as well as he expected, is proved by his present position. But a short time elapsed before he was associated with Wescott as a co-laborer. What was it that Wescott agreed to do, of which Phelps spoke to his wife in the month of January? Was it to second his efforts to get into the service of the Company by commending him to their good opinion as sagacious and shrewd? If so, we have the evidence that he was true. Did he agree still further to furnish material to the extent of his capacity for the narrative that was to be written, giving a minute account of confesions, of threats, of private talk between husband and wife, of his escape from Goose Creek, of the hole in the wall, of the picket fence? If so, he proved true. He committed one error in fulfiling his agreement, by omitting a personal inspection of the fence, and by relying upon loose information as to the locality of Fitch's sleeping apartment. Was it, that if Phelps would swear that Gay made confessions to him, and that Fitch arranged an interview between them on the dock, he would supply materials to show that Fitch was acquainted with Gay, by following him and Jo Dows to Gay's house? If so, he proved true. But as before, he committed a slight mistake—which may have arisen from his zeal, and from his apprehensions of speedy death from violence. Was it a part of his agreement that he would swear that Fitch told him before the depot was burned in Detroit, that he wanted to hire him or some shrewd man to burn four depots; one at Detroit, one at Ann Arbor, Kalamazoo and Niles; and that he would pay him one thousand dollars to burn the four, or two hundred and fifty dollars to burn the one in Detroit, if Phelps would swear that after it was burned Fitch and other defendants confessed they hired Gay to do it? If so, he was true. If such was the nature of their agreement, he stands acquitted of any attempt to avoid its fulfilment in good faith. If Jones had not been in the city on Thursday to monoplize the time of Mr. Fitch, and if the gentleman from Branch county had not been here to claim his society on Friday evening, no mistakes would have occurred. For that, Wescott is not responsible.

But Phelps has no cause to complain of the unfortunate errors into which his associate has fallen, for the reason that the same fatality seems to have followed his footsteps, resulting from his own act; for if he had not gone to the Centre in December, in company with three or four young men, who were his cousins, we never could have

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proved that the interview he has related as occurring at the barn on that day, was a fiction of his own creation. If he had not induced William Laycock to go there with him on his next visit in January, the conversation that he has sworn to, in which he says Fitch admitted the hiring of Gay, the sending of the match and money to Detroit, described its construction, the materials with which to charge it, and the method of using it, would have stood uncontradicted and beyond all danger of refutation by direct and positive proof. If he had not retained the diary, but had permitted Lake to have it for study, he would not have been contradicted by him, by his swearing that no money had been paid to him at Bascom's towards burning the Niles depot. If he had kept Lake from the society of lewd women, and compelled him to study and had listened to his recitations daily, from the time the last chapter of the diary was written, their statements of what occurred upon Lake's introduction to Fitch at the Centre, and upon his introduction to Williams, Corwin and others, at Leoni, and at Bascom's on the 4th of March, would have corresponded in substance, language and punctuation.

In short, there would have been no contradictions between them, and Lake's imperfect remembrance of its contents would not have compelled the counsel to confine his examination to three or four chapters. He would not have sworn that Wescott had been at the residence of Phelps—which leads to an inquiry as to the purpose of his visits. What business could he have had with Phelps in the month of March? He had been removed from the field of his danger where his life had been periled, to the duplicate office. His missions to Sylvan must therefore have been in furtherance of the object common to him and them. Possibly it may have been that from the recent employment of Lake the engineer, the dimensions and structure of the revolving fire machine were to be settled in full council. That there was a perfect understanding and arrangement as to the evidence they were fabricating for this cause, is proved by the science of correspondence. The leading, material and controlling points in what they have sworn to, developes a case upon the precise plan or plot which Phelps says was discussed between himself and Gay at their first and accidental meeting in the saloon, and which was renewed by them again at their second interview. The suggestion of predicating a charge of arson upon the depot already burned, against innocent persons, as a means of benefitting friends and punishing enemies, was advanced by Phelps. Its paternity is with him. Is it unfair, when we find him at the head and front of a prosecution resting upon evidence identical with the fiction he proposed, to hold him responsible for all the absurdities and improbabilities, contradictions and impeachments that impart to it the same factitious character? He that deviseth can execute.

It is a singular fact that of all the witnesses who have been sworn in the trial of this cause, Phelps alone has developed the scheme of charging fictitious crimes not only upon enemies to save friends, but upon those whose knowledge might make them useful as witnesses, as a means of defeating the ends of justice, by screening the guilty.

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That neither of these wicked schemes had been forgotten in this trial, is evident from the fact that thirty of the defendants will go forth to their homes and friends without having been mentioned in the testimony of any witness as connected with the violation of any law. Why have they been disgraced by an arrest and indictment? It has been done with the admitted intention of placing them in such a position that they could not be witnesses for those whose disgrace and imprisonment this prosecution was designed to accomplish. It is not surprising, that, under such circumstances, their convictions should have been regarded as a certanity, and that the announcement should have been made through the daily and weekly press of this city, simultaneously with their arrest,that these victims of prejudice aad perjury could not be successfuly defended. Not content with arresting the seven or eight persons who had been proscribed their immediate neighbors, who were acquainted with their habits, and knew such facts as would overthrow the false circumstances with which they had been surrouned, were outlawed, and deprived of the right to stand before this jury as witnesses.

This cause must find its parallel in some event of English history, other than the Gun Powder plot. In the reign of Charles II, his Protestant subjects were extremely jealous of any approach of Catholic influence in the government. Titus Oates, a wretch whose vices had driven him beyond the pale of society, wrote a narrative, in which, taking advantage of the public prejudice, he described a conspiracy by the Catholics to subvert the influence of the established church, and plant their own faith upon its ruins. He swore to the truth of his narrative, as Phelps has done. The feelings and prejudices of the English people favored his wicked designs. Whoever that depraved outcast accused, went to the dungeon, and to an ignominious death in quick succession. No station in life, no degree of devotion to the government and laws of their country, furnished security to the subject. It mattered not that his victims pointed to a life of loyalty, purity and patriotism, or that they called upon their peers to prove their innocence. The oath of an outcast was deemed conclusive of the truth of his fictitious accusation, and was the sure condemnation of those who were so unfortunate as to be marked for the sacrifice. Rump judges forgot that their office was to administer law and justice; that a trial by jury was for the protection of the innocent as well as for the punishment of the guilty. They sometimes even forgot to be decent, and allowed high-minded and conscientious witnesses for the accused to be hooted and abused as perjured abettors of the conspiracy. The impostor had his day of public eclat in which he was caressed, and after that his day of terrible retribution. Phelps has attained equal celebrity. If he has not received the approval of his government, he has been fondled, caressed and protected by a corporation, that having risen superior to the government, has trampled the Constitution, and laws of your State underfoot. Railroads did not belong to the inventive genius of the seventeenth century, but if the great English impostor had been reserved by his Creator to the present generation and to Mi-

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chigan, this corporation might have had another witness; Phelps another coadjutor, but not a superior.

Forgetful of the boasted strength, truth, integrity, convincing and all-conquering force of its own cause, the government speaking through the organs supplied for its utterance by the Railroad Company, has abandoned the evidence of its three oracles, and asks you to convict the defendants, because John Hawley who was sworn in their behalf, has come before you and admitted that he had stated what was false. If his statement was false, who is chargeable with the falsehood? Not any of the defendants, because they had none of them ever known or seen him before he came into the witness box and told his story. They had not solicited his evidence. The Counsel for the prisoners are not to be charged with, nor are they blamable for his wickedness, if he swore false; because he says he was induced to come here as a witness by one of Phelps' associates. We had been informed that Phelps pretended in his first revelations to have learned from some one in Indiana who burned the depot, instead of from Gay. A friend of one of the defendants having been advised of the fact, went there with the view of learning the truth. Unfortunately he fell into company with one of Phelps' old associates, who imposed upon him, by introducing him to Hawley as a respectable man. He brought him to this city well recommended in character. He imposed upon me and my associate, if he has sworn false. The defendants and their counsel are not responsible for his conduct.

What was he called to prove? Phelps had solemnly sworn that he had no feelings of enmity towards any of the defendants, and especially toward Mr. Fitch. Hawley was called as a witness, simply to prove that Phelps had lied in this respect. That he had made statements indicating revengeful feelings, by proving that he had proposed to charge fictitious crimes upon him. This was the legitimate and only effect of his evidence. Suppose the statement of Hawley to be untrue, have we attempted to prove by him that which was false in fact? No, gentlemen, we have not; and although Hawly may have stated what was false, in swearing that Phelps proposed to hire him to burn a depot, so that he might charge the act upon Mr. Fitch and others; yet the main fact that he sought and intended to accomplish the conviction of Mr. Fitch and all others who contributed to his own conviction,—that he hated and despised them, stands incontrovertibly proved by his threats of Mr. Fitch to Mr. Foster and Mr. Beebe; so that, although Hawley may have lied as to the occurrence he represents, he has not belied the feelings of Phelps. He was imposed upon us by the procurement of one of Phelps' associates and friends. Whatever may be thought of his testimony, the truth is not and cannot be controverted, that Phelps was seeking to avenge his own disgrace upon a portion of these defendants.

If we have not been imposed upon by any one other than Hawley, we have occasion to be thankful.

This cause depends upon the truth of Phelps, and the capacity of his match.

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I have shown from the testimony brought into this cause, that no conspiracy ever existed between the accused persons, or any number of them, to accomplish an injury to the property or business of the corporation, the servants, agents and money of which have been the instruments of this unparalleled and oppressive proceeding. The bare suggestion that such a fearful and determined organization had been formed for the term of two years, reputes itself. If it was true, that they had so combined, and had abandoned themselves to the promptings of the worst passions to which men are prone, *hatred* and *revenge*, there would not, nay, there could not have been such a perfect dearth—such an entire absence of all proof. If fancied or real wrongs had produced animosity so terrible, so reckless, so general as to lead forty men to enter into a covenant, with solemn pledges, to reduce the road to ruins, where is the countervailing influence that hos stayed the consummation of the compact? Is it possible that so many, or any number of men, should have conceived a crime of such magnitude, and after the lapse of two years, with every facility to make it real, that nothing but its romantic conception can be imputed to them?

If any injuries have been shown, they are not the result of deliberation, of concert and combination of effort, but they are isolated, vagrant, impulsive and individual acts. Where are the numerous and expensive bridges that span the rivers and streams on the line of the road? They were easy of access, and if one injury could be more serious than another, more annoying, and produce greater loss, it would be the destruction of them. Yet they all stand, and have stood for two years, bearing loaded trains over the iron rails that stretch from one bank ti the other.

I have shown, from a combination of the material facts proved by the government; with those shown by the defendants, that their innocense is a logical certainity. In a criminal case, every hypothesis that favors the innocence of the accused, must be excluded by evidence, or no conviction can be had. It is not sufficient that the testimony raise a suspicion; but it must, when subjected to the test of reason, be divested of doubt. If any fair suggestion can be made that will leave the judgment not fully convinced, that will lead to the reflection, upon mature deliberation and just criticism, that the party may be innocent, the jury shall not say he is guilty. In this cause every hypothesis of guilt is excluded. *First*—Because no circumstance or fact indicates that the alleged principal and accessories ever knew or saw each other; but their divers habits and characters —the distance intervening between the places of their residence— the fact that Gay had never been in the country where they lived, and was unknown to the inhabitants thereof—the fact that not one of the prisoners had been in Detroit within two years before the fire —shows that they could not have been acquainted with each other. *Second*—For the reason that it is not possible that he should have put the box in the cupola without being observed by the workmen or the watch; and from the utter impossibility that the fire would have continued, after the exclusion of the air, during the time re-

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quired to carry it from his house to the depot; but above all, because it is shown to be a philosophical impossibility to make such a match burn for the space of ten minutes, under the most favorable circumstances, when charged in the manner described by the witnesses. *Third*—For the reason that it is not only possible, but more than probable, that the fire originated from the carelessness of men at work in the building, or from other casuality; from the fact that when first seen by those who looked with the view of ascertaining where it was located, the flame was several feet distance from and below the cupola, at a place where it could not have been communicated by an incendiary. All the witnesses who have been called to controvert the statements of those sworn for the defence, disagree as to the particular place at which they first saw the fire; but they all agree in locating it from ten to twenty feet above the ridge of the main roof, with the exception of Mr. Bush, who swears that he ascended the stairs to the second floor, and that the fire was then confined to the timbers, not only below the floor of the cupola, but below the ridge of the roof of the main building. Therefore, it cannot be true that the fire was communicated by placing a box or machine upon the floor of the cupola, which was from one to two feet above the ridge of the main roof; because if that had been done, the flame would not have been first visible below that floor, or fifteen or twenty feet above it.

I have also shown you that the charge of arson upon these prisoners, is the result of a conspiracy. 1st. For the reason that the confessions to which Phelps, Lake and Wescott have sworn, are unnatural and improbable, and in most instances that it is impossible that what they have related should have occurred; and one of them from his own admission, had conceived and proposed the scheme of making false accusations of the crime of arson, to be predicated upon the loss of the same building for the destruction of which these prisoners are upon trial. 2d. The witness who proposed this scheme had wrongs, real or fancied, to redress against a portion of the defendants; and he has falsely sworn to relations of friendship and confidence, well knowing that feelings of hatred existed on his part, and distrust and suspicion on their's, arising from a knowledge of his infamous character. 3d. Because the facts and circumstances which have been proved, show that he and one of his coadjutors must have made the matches. They have never been seen without their presence, and you have their denial alone, in opposition to the fact that they were possessed of the tools and of timber from which they must have been made—as to which there can be no dispute. The texture, circles, and above all, a blister or knurl, formed upon the end of the block of timber, and in a corresponding place upon the end of the match, mutely but eloquently proclaims their identity. 4th. The interviews to which Phelps has testified between himself, Mr. Fitch and others, are shown to be false. The evidence of Wescott, as to his material statements, intended to show an acquaintance or intimacy between the alleged principal and one of the accessories, is equally so. They stand unsupported. The Niles enterprise, which

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was intended to impart an impression of truth and force, to the statements of two of these witnesses, is a mere fiction and fraud. No fact that has been sworn to by any man of pretended respectability, has any tendency to establish the truth of what they have said; but such facts are not attendant upon or connected with that which is alledged against the prisoners. You have seen that it may be true that Phelps went to Lansing and approached one of the defendants, that he followed him to Detroit and forced his recognition, and yet that no secrets, no criminal or virtuous acts should have been communicated to him. You have seen that the falsehood with which he has associated his visit to Detroit, has no consistence—" the lie is transparent."

It is then true, that the means by which these three witnesses have sought to accomplish the disgrace and imprisonment of the defendants, are unlawful, and therefore their association is a wicked and corrupt conspiracy.

I have gone through with a discussion of the material facts in this case, and made such deductions as irresistably arise therefrom, with the view of vindicating the truth, and in the same manner that I should have done, if death had not invaded this court room, and relieved you of the responsibility of pronouncing a verdict for or against him who has been treated as one or the vilest and most abandoned of men. When we commenced this trial, there were thirty-seven parties to the issue, who were immediately interested in the verdict that should be rendered; because it might affect their liberty. But there was one among the number more deeply interested than any other—because he had been denounced not only as the leader of a band, organized for the destruction of property and life, but the odium of nearly every crime known to the law was cast upon him. *His* conviction was said to be the great object of this prosecution. It was determined and avowed by its instigators that so long as he breathed the breath of life he should never have a day of liberty. That determination has been accomplished. Mr. Fitch has attended this Court and jury for three months. He demanded the right of giving bail—a right that belongs to every citizen. Having entered into a recognizance in the sum of twenty thousand dollars upon the indictments pending against him in this Court, he was detained upon civil process at the suit of the Railroad Company, upon an order requiring bail in the sum of fifty thousand. The controversy ceased to be an issue between him and the people of this State, and became one of the monetary power between himself and a corporation with seven million dollars capital. He met a power behind and above the government—a power that is seldom regulated by humane and just sentiments; that always seeks to crush those it cannot cajole. He lived to hear the details of crimes existing in fiction alone, which were as novel as they were revolting to him. His life has been sacrificed in the midst of his days. God in his providence has permitted him to fall upon the altar of freedom—a victim of injustice and oppression.

The community in which he has lived has lost one of its most use-

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ful and upright citizens—a large circle of friends, one whom they honored and respected when living, and whose memory they will never cease to venerate—the surviving defendants, one who was not an associate in crime, but a high-minded and conscientious man, whose kindness as a neighbor they have more than once had occasion to appreciate. A home which was the seat of comfort, luxury and happiness, has been made forever desolate. My associate counsel will always remember him as a gentleman whose innocence they never doubted, and who was only anxious that his trial might reveal the truth. Never forgetting him as a gentleman of uncommon endowments, just and honorable; I shall always remember him as among my best and earliest friends. The last solemn and impressive words that he uttered on earth, belong to his friends alone, and I will not make them public property by repeating them here. A higher and holier tribunal has ere this judged him in mercy. As his counsel, and as his friend, it was my solemn duty to discuss the evidence, not only to rescue his memory from reproach, but in justice ot the defendants who are still living and awaiting your verdict.

Your responsibility is to the Government and the prisoners now before you. I commit them to your judgment; that it will be conscientiously delivered, your standing as citizens and men, the patience with which you have listened to the evidence, is a sufficient guaranty. I remember that spring time and summer have passed away and that another quarter of the year has overtaken us since you were empannelled, and I leave the further discussion of this cause to my distinguished associates.

Mr. Hewitt.

After Mr. Howard concluded his remarks, Mr. Hewitt, as counsel for Mr. Smith, one of the defendants, opened his argument as follows:

May it please the court, and gentlemen of the jury,—Circumstances having materially changed since my original connection as counsel in this case, I appear here in a very peculiar position; and the court has intimated that I must confine myself to my remaining client, Mr. Smith, instead of to Messrs. Smith and Gunn—Mr. Gunn having died since its commencement. The testimony originally applied to both clients, and was more or less interwoven with the entire case; and I am now obliged to pursue an entirely different course. It would be almost impossible for me to single out this one defendant, without referring occasionally to the testimony of others; for the testimony which refers to him alone was confined to a single point, and had the case been kept where I suppose it ought to have been kept, and where the counsel for the defence contended it should be kept, although they were over-ruled by the court at the outset, there would have been but a single word of evidence touching or affecting my client. But it was hinted that it would have been ne-

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cessary to take up the issue for the purpose of trying this defendant step by step, to show the connection with the crime charged in this indictment. It was claimed that it was necessary to show the original connection with this defendant that the conspiracy had been formed—that they had their secret meetings, their bond of union, and their oath which compelled them to stand by each other,no matter how far the conspiracy was to be carried. We contended that they could show no such thing, and that they had been deceived in rlation to this matter. Was there any opportunity of their being deceived? How could it be done, when the testimony had been written down, and it had been consulted over for months. Not only had it been written down, but it had been sworn to, and there was no opportunity for mistakes,so far as related to secret meetings, bonds of union, or oaths to concentrate action.

But gentlemen of the jury, where do we find any secret meetings which the testimony has developed? True, it was necessary for them in the first place to lay a foundation broad enough to introduce testimony which would not have been permitted under any other circumstances. It was to get it in as ruleable, and at another time to tell you it was the reverse. That issue relates to two men; those men had been convicts in the State prison, and without the broad foundation which had been laid for this conspiracy, they could not go into all these acts for depredations upon the railroad in connection with the burning of the depot at Detroit—they could not go into all these minute incidents which witnesses could make and corroborate. If the story this witness told was true they could just as well have tried the case in five days, by getting at the facts connected with the statement, as to have been five weeks in obtaining witnesses from all over the State. But the object was apparent, it was to come before us with a plausible story, and say that Phelps was sent to State's prison wrongfully—that the simple fact of his confinement in the Penitentiary was nothing; still they show you by their acts that they are to depend upon something else beside it. The story itself which he was to testify to they knew to be so startling that it would not be believed.

Coming back to a point at which they claim he formed an intimacy with the principal defendants here; being, as he says, let into the secrets of these defendants, and going on and writing out his statement, the counsel presenting it to him—their seeing it only that day and before their coming on to the stand and swearing to it as if the story was credible in itself. But there was another thing they knew. They knew full well it was necessary to corroborate the testimony of the witness Phelps, from the fact that his appearance on the stand was snch that no sane man would believe his story. Did he come forward and attempt to tell a plain, simple and unvarnished tale, and meet a cross examination fairly? or did he stand there with a kind of smile upon his countenance, as much as to say, Gentlemen, if I am smart enough you cannot catch me. When he was attempting to point out any particular circumstance, did not his acts show to you that he was not to be believed.

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I said, gentlemen, I should confine myself as closely as I could to this one particlar client, and in doing so, I necessarily speak of Phelps, as he is the only witness who has testified in relation to the defendant Smith. And now let us look for a moment at the statements of these two witnesses, Phelps and Lake.

Take their own stories as they gave them on the stand—take the fact that these two men formed their acquaintance in the State's prison while together, and the additional fact that Lake states that they were intimate for only a short time—that they had a difficulty and were never friendly afterwards. Take another fact which Lake gives; which is, that he did like Phelps because he was a bad man. And then whhn you find Phelps in the employ of the railroad Company, for the purpose of ferretting out the depredations on the road, who is the firit man he goes to to assist him? Who does he make his right hand man? A man, gentlemen, who he is not good friends with, in whom he had no confidence, and who had no confidence in him, and the only man that Phelps had controlled in this case—the man he had made his bosam companion almost—is this man Lake. And yet Lake tells you they were not good friends, and not on good terms, the reason why you are already in possession of.

The Conversation and only evidence there is at all in relation to the participation of Smith in burning the depot was by Phelps himself. No other person was presant, whose testimony is brought on the stand. He stated to you in relation to this conversation which he had with Gay, and in which Gay admitted to him that he had received a certain amount of money from these defendants in relation to burning the depot. He asked Smith what Gay had done with the money, and Smith replied, "he had kept the whole of it." This I believe is the extent in relation to Smith. Now if we had not gone first to the indictment for burning the depot, this would be the entire evidence against Smith. But it will be claimed that there are other evidences against him—that he had been present and aided in the conspiracy to burn the new depot. Now all this must be taken in reference to the night Gay burned the depot, and in the manner stated by Phelps in his evidence. For if you, gentlemen, do not determine that this depot was burned by Gay with a match, then there is an end to this whole case. If there can be a doubt about it—a reasonable doubt about it—that it was burnt without lt, it shows that this statement is untrue, because the story is all connected together, came from the same witness, and is part and parcel of the same transaction.

Mr. Hewitt proceeded at some length in reviewing the testimony as given by Phelps and Lake. Making nice criticisms and distinctions udon the various points embraced therein, and alluding particularly, and with emphasis to their being in the employ of the Railroad Company, upon a fixed salary, with a prospect of a large increase in case of the conviction of any of the perpetrators of the outrages committed on the road. And that they, under these circumstances, felt bound to make the best use of their time, and did not scruple he intimated, to deviate from the truth. He alluded also to

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the improbability of these men carrying out any concerted plan of action, adopting rules of government, ond carrying on their meetings for the purpose of concocting plans for obstructing the track, and destroying the property of the company without being detected, when it is admitted that most, if not all their meetings, were held in a public bar room, and where they were constantly liable to interruption by frequent visits from travelers and visitori to such places of amusement.]

The heat being most oppressive, and the sitting having been protracted to an unusual length, the court took a recess until two o'clock.

WEDNESDAY AFTERNOON.

Mr Hewitt resumed his argument.

Gentlemen of the Jury, you will recollect that when we adjourned for dinner, I was attempting to trace the foundation, origin and extent of this conspiracy. I did not exhibit or wish to follow the testimony through the course entirely, or make direct reference to the various witnesses who have testified upon this point. I shall refer to the case generally, but especially with reference to the particular client in whose behalf I was addressing you.

I had traced the matter and spoken of the meeting at Michigan Centre—at Filley's tavern—of the obstructions placed upon the road, and of the depredations committed upon the property of the company, as connected with the main purposes of the prosecution, to wit: to show that there was an organized body of men bound together for the avowed object of committing such crimes, and of carrying them to such an extent that the company would pay them such sums as they demanded, for injuries done to their property.

I don't know that it will be necessary for the purposes of this examination to follow that branch any further. I think the evidence clear, and that it has demonstrated that there was no such organization, or systematic plan of operations. It is so clear that it needs no further comment on my part. The simple fact I alluded to of the perfect absence of any proof to bring this case up to the point pledged by the prosecution at the outset, is sufficient to render it necessary to button up this branch of the case to faith, or to occupy your time, and consume my own strength in commenting more upon it.

It had been stated that this was an issue between the people of the State of Michigan and the defendants. As a matter of form it is so. But as a matter of fact it is an issue between the rail road company and the defendants. That company had come here, and protected by the public sanction, had for their own benefit invested a large amount of money. And whatever may be said of the people at large, this issue resolves itself down to a single point, and that is between the company and any persons they may see fit to attack.

It is for their own interests that they have constructed this road, it is for this that they are continually dogging our Legislature for special privileges—privileges which neither you nor I can obtain. They invest money for the sake of making money; they bring their operations to a single point, in order to secure the most influence

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and the most honor. What are their interests here? In the first place it is to make the most money for themselves; in the next place to make all subject to them, and to show that they have not only the will, but the power to lay their hands upon them and crush them at once, simply because they will not submit quietly without complaining or saying a word. This is the case with these defendants.

Can we, if our property is injured or destroyed by this company, get satisfaction. We can go into the courts, it is true, and in some instances have justice done us; but even here the citizen is not on equal footing with the company, and has not equal rights. Where is the individual in this State, with two or three exceptions, that can enforce his legal rights against this company. There is not one.

Money is power; and when money is used by those who have little consciences and no souls, the chances are not equal; it is used to oppress the poor and weak. It has been proved that the railroad company was in the habit of running over the property—cattle of these defendants—I will not say wilfully or malignantly, but they ran over and destroyed them. One case I will refer to, when the best cow of a poor man was run over and killed, and when he went to save what he could of her, she was burnt up. Those in the employ of the rail road had piled wood around her and set it on fire. I allude to this case—the case of Williams, I believe, as showing what has been done; but that is immaterial. By the laws of this State the company has a right to run through our farms without our consent, and that too without fencing the road. And if our cattle are killed upon our own farm we are left without any remedy. It has so been decided during the last year, by our courts. If they are killed at the crossings of the public highway, we may get pay for them; [but the poor man] has no means to enforce his remedy. He can only appeal to their sense of justice. If they refuse him compensation, he has got to lie down and bear it.

Is it strange that men thus circumstanced become desperate? Is it strange that they are impelled to do what the law will not bear them out in doing? If anything has been done aiming towards the destruction of the property of this road, it has been from desperation. If obstructions have been placed upon the track, it has been by the way of revenge of individual wrong, and not by any association between these men. Numerous instances have occurred in which men have had their property destroyed, and have been met with the insolent proposition to pay the one half its value. Is it strange that a man, after losing his property and being thus insulted, should take the power into his own hands? But even if this is the case, I say it does not show any organization between these men to injure the property of the Central Railroad. If this state of facts does not prove a conspiracy ending with the burning of the depot in Detroit, then it has nothing to do with this case.

I ask, gentlemen, what has the evidence in relation to a conspiracy—to a systematic organization, to do with this case.

In saying this I do not mean to admit, and I do not admit that there has been any testimony to show a conspiracy, except to show

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that the witnesses for the prosecution have been attempting to carry out a conspiracy more dangerous to property, liberty, and life, than any with which these defendants are even charged. I ask, gentlemen, is there any class of citizens so much to be feared as a body of men banded together to accomplish their purposes by wilfull perjury? You can guard against the thief, you can guard against the midnight assassin. But you cannot guard yourself against him who is in secret plots to swear away your liberty by wilfull and corrupt perjury. You can commit a man more readily for any other crime than perjury. And for this reason this crime has become alarmingly frequent. You may ask clerks of courts, sheriffs, attorneys, or other persons in the habit of attending our courts, if this is not so, or search the rounds of our courts, and you will find but few cases if any of a conviction for perjury recorded. Our laws are in such a shape that almost any man may commit this crime and, with ordinary caution, go unwhipt of justice.

Then there is nothing left, I aver, of the conspiracy except the admissions of the defendants about forging money or having a knowledge of the burning of the depot. Take all the circumstances—judging from the appearance of the witnesses on the stand, what amount of credibility is to be given to this part of the testimony? Though a witness may be corroborated in some points, the proposition that, therefore, he is a creditable witness is not so broad, and common sense will not permit us to give credence to a witness where he has not been corroborated. The character and effect of a witnesse's evidence, in the first place, depends upon his own credibility, and if not creditable, to the manner in which he is corroborated. Much depends upon the appearance of the witness upon the stand, though he may be corroborated in some instances.

I by no means admit that the depot was burned by design at all. I deny that it has been proved that George Washington Gay burned this depot or had any hand in it except by his own admissions, which are not evidence here, Gay not being on trial, or having been convicted. If the prosecution had evidence of the fact, which they intimate they have, by attempting to raise the difference by the testimony of Titus, that Gay's wife placed the match found by him under the sidewalk, subsepuent to the arrest of Gay, they ought to have submitted it to the jury and not left so important a question to mere inference.

The evidence which has been given mainly points at Fitch. *Mainly*, I say, because he was brought up here as the leader of the gang. He was called the Captain, and to show that he was "THE CAPTAIN," it has even been said that when they were coming in upon the cars, at the time of their arrest, if any of these defendants were about to say something of their knowledge of Phelps or Gay, a command went forth from Fitch which silenced them at once. It has been rung in our ears from that time to this, that Fitch was the ring leader. He has been adjudged and worthy of punishment even without a trial. The maxim of the law is, that a man shall be deemed innocent until he is proved guilty. Unfortunately we have been

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placed on the reverse side of this picture, and public opinion and the press, for a time, almost demanded that he should be hung up without hardly the form of a trial. These defendants have been called upon, in effect at least, if not in form, to prove themselves innocent, because they happen to be charged with being guilty.

But public opinion has changed, and is changing, and because it has changed is sneered at by one of the counsel on the other side. The sober, second thought has come. Time will always right public opinion. The man who sets himself up in defiance of it, though he were the greatest man living, must either be a very great knave or a consummate fool.

But to come back to the point in relation to the admissions of these defendants about burning the depot and their participation in it. And upon this point, I only desire to refer to the testimony of witnesses, and to simply inquire into the amount of credit to which they are entitled. In the outset the prosecution found it necessary to corroborate their principal witnesses, who mostly graduated at the State Prison—and they went outside the record, as we contend, to corroborate them. In relation to the amount of credit which this corroborating testimony has given them, let us inquire wherein it relates to these admissions. Who are they? Wherein in a single instance have they been corroborated? Unless they show that the burning of the Depot is the result of this conspiracy, by something outside, it cannot be taken into the account at all. And for this simple reason: you cannot contradict a witness on points immaterial, so you cannot corroborate him on immaterial points. This is the case with the testimony of Phelps, Lake, Westcott, and Caswell. None of the facts can be taken into the account so far as regards this issue. Unless the conspiracy be first made out, they are immaterial. I should like to see you put your finger on the least particle of evidence that goes to corroborate Phelps or Lake in their testimony in relation to burning of the depot. You cannot do it; therefore it must be thrown out. It is not the testimony of credible witnesses or corroborated. Then, if the testimony is not corroborated, and I contend that it is not, it cannot be taken into the account. One of the witnesses was sent to States Prison from Jackson County; therefore, his evidence is not to be discredited on that account; also, that he was innocent. The other was sent from Wayne. This is all the difference between them. The latter, it is said, went for a small offence, only assisting another out of jail, one with whom he became acquainted while in there himself for stealing. It is true a man may be a thief—he may be sent to the State Prison —but that don't of itself impeach him. He may be guilty of all the vices, and the simple legal principle closely tied down, says he is a competent witness; it only goes to his credibility. But the old adage seems yet generally to be regarded as true, that "if a man will steal, he will lie."

But I need not spend so much time on this point. The prosecution began upon the assumption that these men were not to be believed unless they were corroborated and sustained. How far they

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with Clark. I had laid aside part of my disguise at this time; I gave a written statement of what I saw and heard, that afternoon, to Mr. Van Arman. Phelps was not present; I did not swear to it; have never seen it since to read it; no one since that day has ever conversed with me about what I was going to swear to here.

By a juror—When Hay came up towards me in the morning near Jackson, he hitched his horse; was a long time hitching his horse, and then came a few rods towards me, and turned back, got on his horse and rode off; his actions induced me to believe he was watching me.

Alanson Sheley sworn—Reside in this city; know Phelps, who was sworn here; know Fitch; did not know him before his arrest; last winter I was at Johnson's Hotel; saw no one I knew; a man was walking back and forth at the tavern; soon saw a man coming from the depot, rather shabbily dressed; the man whom I saw walking back and forth stepped out and met him, shook hands with him and asked him if he was here yet; the man who came from the depot looked loaferish and muddy, as though he had been out traveling somewhere. The other one, from the hotel, was a well dressed, gentlemanly looking man; the well dressed one was taller than the other. When Phelps told his story before the grand jury, I remembered the conversation and circumstances, and I went up to the jail to see if I could recognize Fitch; after a little I saw a man among the prisoners who I thought was the same I saw near the depot; I was told this man was Fitch; I think the man I saw at the depot was rather taller than Fitch is, but his face looks like the one I saw there; the other man was about Phelps' size, but I think looked a little thicker than Phelps; can't now say it was Phelps; it was in the spring I saw them.

Mr. Seward noted an exception to the reception of the testimony, on the ground that the persons were not identified.

Witness—The well dressed man asked the other if he had not gone yet, and the other said he had not yet got his fish, and asked if he knew where he could get them; the well dressed man said "round there," pointing towards the dock and warehouse; I thought at the time that the man need not be in such a hurry, as it was too late to get them on the cars; I left them talking, and heard this conversation as I passed them; I never told of this or thought of it afterwards, until Phelps appeared before the grand jury, which brought the subject to my memory; I was a member of the grand jury; I think the shabby dressed man had his pantaloons in the tops of his boots; wore a cap and I think had an overcoat.

Mr. Seward noted an exception to the reception of the evidence: that witness had not mentioned what he saw till he heard Phelps before the grand jury.

Cross examination waived.

The court took a recess for an hour.

AFTERNOON SESSION.

Geo. V. N. Lothrop sworn—by Van Arman—Was Attorney General of the State from April, 1848, to last January; had something to do with the prosecution of one Lester, in Jackson county, for depredations upon the rail road in 1849.

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But as they neglected to do it the presumption, instead of being in their favor it is aganst them.

But, gendemen, I have said all I wish to upon that point.

Athough much has been said about that match, I wish to say something about the probability of the depot being burned by a match—such as the match proposed by the prosecution, and sworn to by Phelps.

We claim that the testimony offered by the prosecution to prove the burning of the depot by that match, is an entire failure.

I need not spend your time nor mine in showing you that the experiments we made to test the possibility of the kind of match sworn to by Phelps burning the depot, under the circumstances as laid by the prosecution, shwed that it was all a humbug. You will find a description of the match in Phelp's testimony, which I will road, (reads it) Speaking of the match used at Niles, he said that it was the same kind.

Then there is the evidence of Phelps about the cotton and camphene. He says he lent Gay $2,00; he sent his boy to Parker's and bought the camphene.

Now, the idea that camphene will not burn in the manner and under the circumstances described by Phelps, was never entertained or thought of by them, until we showed to the contrary by repeated experiments. They too, got a chemist to experiment. But how long did he experiment? What result did he arrive at? Had his experiments sustained them, why did they bring the result here in perfect triumph? No, gentlemen, had it been necessary, and had there been any probability that a match could have been manufactured, such as is described by Phelps, Dr. Desnoyers, such is his love for science, and his determination not to be beat, would have experimented five years—especially if backed by their money and paid for his time.

It is said that Gay fired his match at his own house, which is about a mile and a half from the depot. It was fired at 8 o'clock in the evening, and 2 o'clock in the morning is the shortest time given by any witness, as the time when the fire broke out. Thus causing six or eight hours to intervene between the firing of the match and the depot. And then he carried into the depot among the hands employed there, and up stairs, when it accomplished its work of destruction. A very probable story indeed! Dr. Desnoyers tried the camphene, as described by Phelps, and it proved a perfect failure. Now, unless it is shown by a fair experiment that these matches furnished by Gay or Phelps can be made to burn, there is an end to the case; for it is built upon the hypothesis that the depot was burned by one of these matches; some other way wont do. We must have the depot burned by this match or nothing; at our hands.

I need not take up your time on the evidence in relation to the burning. There is none except the confessions of Gay as proved by Phelps, Van Arman and Clark. It is contended that this is sufficient. Arson is not likely to be perpetrated before witnesses. No man who proposes to perpetrate any crime, is very apt to do it in the presence of others; it is for this reason that I have argued against conspiracy;

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there was no secrecy about it. Alluding to their own showing, the outrages which are alleged to have been committed, were quite a public matter. Men don't act thus when banded together for the commission of crime; no, gentlemen, it is unnatural.

Gentlemen—How many mills have you known to have been burned by taking fire from the machinery? And elevators are more likely to produce it than any other kind of machinery, not on account of the velocity, but of the weight upon them and the friction of the band. How many witnesses told you that there was more than usual weight upon the elevator in the depot, but that they thought this was not sufficient motion to produce combustion. The whole theory of the charge against Gay is that he burned the depot by applying this match. Now if we prove that it could have been burned in any other way, the case falls to the ground. Well, we have shown by one witness that a candle was placed upon a bin, up stairs, by being merely affixed in tallow melted and dropped on the bin. We produced another who tells us that the same thing was done below stairs. On the night of the fire, a candle had been burning within a foot of the roof, being upon the side of the bin. Here are then different occasions when lights were fastened in an unusual way. I submit whether there is not great danger of setting fire to a dry ceiling with a candle within a foot of it? They were not so careful in the depot as they pretended to be. I refer to this part of the testimony to show that it is very probable that this building took fire by accident. I refer to it to show that the proof and testimony is very far from being satisfactory to prove that the building was not fired by design.

The first thing to be proved beyond a doubt, is that the depot was not on fire by design. But after you have found this, your task is not done. You have then got to find whether the fire originated in the manner laid down in the indictment—men are not to be convicted by presumption. You are not to deprive a man of his liberty unless you are satisfied beyond a doubt, that the prosecution do not lie. This is a material point. The facts have got to be proved in the manner set forth. Some other way wont do. You must take the evidence, and see if it sustains the indictment. If it does not, there is an end of the case.

Another point, and this is in reference to my friend and client Smith. It has a bearing upon his case more strongly, but upon the general conspiracy. The evidence of the prosecution, I insist, is entirely insufficient to convict him with it. No attempt is made to prove that he was one of the original conspirators—none that he was even in Michigan Centre, or in Jackson County, even—nor that he was known to any of these defendants. He is a resident of this city, and has been placed in situations, where if he had not been known he could not have staid. His character stands fair, and Hiram R. Andrews is ready to receive him back into his employment, as soon as we get through with him here. He was a farmer—lost his health, and went to Mexico. He returned to this city, but he has been incarcerated in jail since the 19th of April last, simply because this man Phelps sought to put his hand on him. It is true, he

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was bailed out for six days, and then put back again. For what reason I do not know, as ample bail was offered. It is true, he is guilty of one vice, which I cannot excuse. And it was probably that when he had more liquor in his head than sense—that he said he received a portion of that money, but that Gay kept the most of it. You see I go upon the presumption that Gay is guilty.

But the counsel will say that this is not the whole testimony—that he said subsequently that he knew of the plot to burn the new depot. Is there any evidence of that—evidence sufficient to take an honest citizen from his family, leaving them to the cold charities of the world and incarcerate him in the State Prison.

The argument comes back with redoubled force in the case of Smith, known to you all to be an honest man, in relation to Phelp's credibitity, uncorroborated as he is upon this point. But I need not here comment upon the testimony to impeach Henry Phelps. If it is in the power of one man to impeach another, he is impeached beyond the possibility of redemption.

The rule that the general character of a man may be proved only from his neighborhood; the counsel for the prosecution very prudently agreed to throw open. They knew the character that the neighbors of Henry Phelps would give him, and therefore wished to go where he was not so well known. But on consultation we thought it best to adhere to the rule. Look at the situation of the impeaching evidence. The prosecution will tell you that it came from a very few men. But did not every one—all—the entire neighborhood tell you the same story? Is there an exception within the precincts where he lived? But counsel will say it was to be expected. It was a part of the conspiracy to swear any man into the State Prison who should come up here and testify against them. Where did the impeaching witnesses come from? Not from Michigan Centre—the locality of all these alleged enormities.

In order to commit Smith on this testimony, you must believe Phelps, and according to the Prosecution, you must believe him because he is sustained. Where was it that Phelps alledges that Smith made this second confession about receiving a portion of the money? In the Palo Alto saloon. And Lake swears that he saw him then. He observed no secrecy, as they alledge; he did not even take them aside, but told it publicly in a public room. No, you would not believe it if it come from Dominie Duffield! Circumstances don't lie, if witnesses sometimes do. We dou't boast of committing crime publicly. This is not the way these things are done.

Now, I ask again, what testimony is there that Smith had anything to do with this matter? He had no dealing with the other defendants. He had no knowldge of them, and the only proof that he had anything to do with Gay, comes from Phelps. The testimony of Heman Lake don't help it, as it only refers to a thing to be done, and which has never been done. But what evidence is there that Lake testifies against the defendant, Smith. He went up to the jail and said he did not know him, even when Smith was pointed out to him. It is true, he says he was introduced to a Mr. Smith at the Palo Alto

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saloon. He did not know him before and does not now. This is not a sufficient identification. The Smiths are a little too thick for this. Then there is no evidence even that he was at the Palo Alto saloon at all, for in this Phelps is uncorroborated, and uncorroborated you cannot believe him. It is contrary to every legal principle or rule of evidence. But Smith's admission, taken in its broadest sense, if true, does not show any knowledge on his part of being accessory before the fact, for it is a simple admission of the receipt of a part of the money, made months subsequent to the burning, without reference to the purpose or object for which it was received, and it will not be claimed that the admission, if true, would make him an accessory after the fact.

In conclusion I will only say that I have thus endeavored to present to you a plain, brief statement of the evidence bearing upon the case generally, as far as I could, consistent with the very singular position in which you saw I was placed, without any fault of mine, being left to protect the interests of Smith alone. I have, therefore, referred more particularly to that portion relating to him. I leave the case in your hands, confident that you will give it such attention as its importance demands, and with such assurance in my own mind I have no fears for the result.

MR. SEWARD.

MAY IT PLEASE THE COURT—GENTLEMEN OF THE JURY:—This is Detroit, the Commercial Metropolis of Michigan. It is a prosperous and beautiful city, and is worthy of your pride. I have enjoyed its hospitalities liberal and long. May it stand and grow and flourish forever. Seventy miles westward, toward the centre of the Peninsula, in the County of Jackson, is Leoni, a rural district, containing two new and obscure villages, Leoni and Michigan Centre. Here, in this dock, are the chief members of that community. Either they have committed a great crime against this Capital, or there is here a conspiracy of infamous persons seeking to effect their ruin, by the machinery of the law. A State that allows either great criminals to go unpunished or great conspiracies to prevail, can enjoy neither peace, security, nor respect. This trial occurs in the spring-time of the State. It involves so many private and public interests, develops transactions so singular, and is attended by incidents so touching, that it will probably be regarded not only as an important judicial event in the history of Michigan, but also as entitled to a place among the extraordinary State trials of our country and of our times.

Forty and more citizens of this State were accused of a felony, and demanded, what its constitution assured them, a trial by jury. An advocate was indispensable in such a trial. They required me to assume that office, on the ground of necessity. I was an advocate by profession. For me the law had postponed the question of their guilt or innocence. Can any one furnish me with what would

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have been a sufficient excuse for refusing their demand? *Hoc maxime officii est, ut qaisquam maxime opus indigeat, ita ei potissimum opitulari,** was the instruction given by Cicero. Can the American lawyer find a better rule of conduct, or one derived from higher authority?

A word, Gentlemen, on the origin and progress of this controversy—not to excuse the defendants nor to arraign the State. Fifteen years ago, Michigan attempted to stretch a Railroad across the Peninsula, from shore to shore. It was honorable even to fail in so noble a design. An imperfect road was built, reaching from Detroit to Kalamazoo, and was traveled by a few slothful engines. The State conducted it, as the State conducts every thing, with conciliation and kindness toward the people. Necessity obliged the State to give the enterprise over to a corporation, which speedily extended the road to the western waters and brought it into a perfect condition. Engines increased equally in numbers and speed, and the road became a thoroughfare alike useful and important to the citizens of Michigan and the whole country. This public gain was attended by the usual conflict between the corporation and citizens, about routes, titles, prices, stations, and property unavoidably taken, injured or destroyed. The regions through which it passed were newly opened. Their inhabitants were *settlers*, and settlers are generally poor. Their farms were not fenced. Public roads, as well as public lands, were habitually used as ranges for pasturage. Cattle, often the settler's only convertible property, were frequently destroyed. The change was sudden and abrupt. The corporation refused to pay damages; the settler insisted on them. Litigation ensued, and failed to settle the contested claim. The corporation offered half price, as a compromise. The settler regarded this as a concession of the right, and insisted on the whole. Jealousy of wealth and power inflamed the controversy. Occasionally a settler retaliated, and ultimately several united in committing trespasses. The corporation invoked the legal tribunals, but failed for want of evidence. The controversy became embittered, chiefly in Jackson County. On the night of the 19th of November last, the freight depot at Detroit took fire and was reduced to ashes. No one dreamed, or ever would have dreamed of an incendiary, had not a public outcast, lured by the tempting rewards of the corporation, conceived the thought of enriching himself by charging the crime committed here upon persons in Jackson county, obnoxious for trespasses committed there. He secretly gave body and form to that suspicion; and on the 19th of April last it resulted in the alleged disclosure of a long concerted, profoundly contrived, and deliberately executed conspiracy, by citizens of Leoni, for the entire demolition of the rails and structures of the Michigan Central Railroad.

Thus it is seen, that the State, by neglecting to provide for the consequences of the sudden change of its policy, caused its citizens "to stumble in their ways from the ancient paths, to walk in paths, in a way not cast up."

*The clear point of duty is, to assist most readily those who most need assistance.

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There has been a wild and fearful conflict. On one side, unbridled, licentious speech, retaliation of private wrongs upon the body politic, by reprisals, reckless of condition, sex or age, and of distinction between the offending and the guiltless; on the other, a corporate police of mercenary spies, haunting and pursuing the steps of all who were exposed to their suspicion or their malice. Secret accusations were carefully compiled by scribes and verified by oaths before magistrates, with the carefully studied and profoundly concealed purpose of obtaining in some way, evidence enough to sustain an accusation against citizens of Leoni, of some crime or crimes for which they could be tried away from Jackson county.

When all was matured, an indictment was speedily found against Abel F. Fitch and others for burning the depot at Detroit; another for burning the new depot which had arisen in its place; another for burning the depot at Niles; another for burning the depot at Marshall; another, in the U. S. Court, for manufacturing and passing counterfeit money, and still another for burning public mails. Civil actions were simultaneously brought against the defendants. Bail, in frightful sums, was exacted in each of these actions and on every one of these indictments. Able and sympathising friends were ready to become bound; but the wealth of Jackson county could not meet the large demand; and the defendants, ever since, have been held fast as in a cage of iron. The corporation employed ten lawyers among the most eminent within the State; and assuming the direction of the prosecution, and defraying a large portion of its expenses, has poured forth, through the lips of its witnesses, the compiled volume of secretly gathered accusations. The prisoners have come daily into Court, to encounter these accusations; and have returned at night to confront pestilential disease in the jail. The press of Michigan received the disclosures as true, and proclaimed them to the world. The press throughout the whole country, accepting the disclosures, responded in expressions of horror to what it regarded as evidence of a universal demoralization in Michigan; and demanded immediate punishment of the accused, with a restoration of the earlier and more rigorous penal code of the State.

Meanwhile, death, by removing the lowest and the highest of the alleged offenders, has invested the transaction with the dignity of tragedy. Reaction has come, and with it division of opinion and of sympathy. It is a strife between a corporation and the city of Detroit on the one side, and the county of Jackson on the other. The question is vehemently discussed, whether Abel F. Fitch died a felon or a victim of cruel oppression. Opposition to the corporation, on whatever grounds, confining itself within legal limits, of course gains strength by moderation. Corporate wealth cannot long oppress the citizen in such a country and under such a government as this. Your verdict against these defendants, if it shall appear to be well grounded upon the evidence, will abate a rapidly rising popular commotion; but, if it shall not be so sustained by the evidence, a people who make the wrongs of each one the common cause of all, will pick strong matter of wrath out of the bloody finger ends of a successful

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conspiracy. You have discrimination, candor and courage. You have need to exercise them all. You cannot escape present censure, whether you find the defendants guilty or innocent. But if your verdict be a truthful one, it will find its vindication in history.

Gentlemen, I want a clear understanding of what we are about, of what we are trying. The clerk has read a description of it from his minutes every morning. Let him read it once more. [Here the Clerk read a summary of the indictment.] There, Gentlemen, you see that it is a case of Arson that we are trying; nothing more, nothing different. This certainly is not what the world supposes we are about. The world thinks we are trying a case of conspiracy; but the world has been misled, it is at fault. The clerk shows us, and I hope the world will now take notice, that the indictment requires an answer to these four questions and nothing else:

1. Did the defendants here on trial, personally burn the depot at Detroit, on the 19th of November last in the night time?

2. Did George Washington Gay burn it? and then,

3. Did they hire and procure him to burn it?

4. Did they, after the fire, with guilty knowledge, harbor and maintain Gay?

There is no proof, and no claim is made for a verdict, against the defendants on either the first or the fourth of these questions; therefore, you have to answer only the second and third questions. I wish I could go at once to the discussion of those two questions; but prudence forbids. Near a month was spent in receiving evidence of felonies and misdemeanors in Jackson county, out of your jurisdiction and foreign from this indictment. I must review that evidence. It was received under a promise that it would prove a conspiracy by the defendants to destroy *all* the property and structure of the company and so including a design to burn the depot at Detroit.

It was in vain that we opposed the offer of that evidence. In vain we said it related to crimes that, even if committed by the defendants, could not be proved against them under this indictment—that if they burned it, or procured it to be burned, it was no matter whether they conspired to do it or not—that if they neither burned the depot nor procured it to be burned, then they could not be convicted here, even though they had conspired; that at least the proof of these alleged felonies ought to be rejected until after the existence of such conspiracy should have been established. The Court overruled us, as you must assume, rightly, and we must for the present acquiesce. So the proof came, tumbling in, helter skelter, and we must now remove it out of the way.

Let us understand clearly what is demanded of the defendants in regard to this portion of the case. We are to show you, not that the alleged trespasses were not committed, nor that the alleged meetings were not held, nor that the alleged menaces were not uttered; but that all the trespasses, meetings and menaces which have been proved do not establish the fact of a conspiracy by the defendants, to destroy *all* the property of the Michigan Central Railroad, nor

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even to destroy the depot at Detroit. When this shall have been demonstrated, this question of conspiracy will clearly appear to be a false issue and will fall out from the case.

The testimony, under this head, presents: 1. Overt acts; 2. Meetings and consultations; 3. Menaces and declarations by defendants.

In examining these several classes of evidence, we will apply two principles, viz: 1. Whatever does not lead at all to the conclusion that a conspiracy existed must be rejected; 2. Whatever looks that way, and yet may easily be explained on a hypothesis different from that of conspiracy, must also be rejected.

I. Overt Acts. I divide these into two classes: 1. Those which were committed by persons not now identified and which were attended by circumstances which remain unexplained; 2. Those which were committed by persons claimed to be identified as defendants and the circumstances attending which are explained.

1st. Trespass. Stones were thrown at the cars on their passage, at a time not specified. Alonzo Holmes says "I was confined at home. They came in and said the cars had been stoned." This is all. The testimony charges nobody with the assault. The fact is proved by hearsay only, which is no proof at all.

2d. Trespass. A second instance is proved by Levi Carter. This occurred in June, '49, fifteen rods east of Leoni. The witness says "that stones were thrown, that he put on the breaks, that he heard the stones strike the cars, that the passengers screamed, that a lady handed him a stone that had fallen in her lap, that a gentleman was struck in the breast and severely hurt." This evidence charges nobody; that is, it charges everybody and therefore charges nobody.

3rd. Trespass. Proved by the same witness. This occurred also near Leoni village. The witness says "stones were thrown from bushes by eight or ten persons. One stone, I think, struck the engine." And that is all.

4th. Trespass. An assault of the cars by stones, proved by John H. Dexter. "I was sitting in my room. The cars came along. I heard glass rattle. I went down and out. I told Filley that stones had been thrown into the parlor. I found Fitch, Filley and Corwin out towards the railroad. The 'Price boys' had been there before I went to bed. There was glass on the track, next day." Gentlemen, you know that Fitch, Filley and Corwin, all lived hard by. It is true they may have thrown the stones at the cars on that occasion; yet it is equally true, that other persons, and not they, may have committed the assault. It is certain that Mr. Dexter did not participate in it, but went out from curiosity. Fitch, Filley and Corwin may have gone out from curiosity also. The 'Price boys' may have remained after the witness went to bed, and may have thrown the stones on that occasion; and on the other hand, they may have gone home and not have thrown the stones. It is not proved, then, that all the defendants named threw stones; and if it be inferred that some of them committed that trespass, we cannot distinguish between the guilty and the innocent, and therefore in the judgment of the law all are guiltless.

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5th. Three instances of assault of the cars by stones, are proved by William Clark. These are probably three of the cases concerning which the witness Wollivar has testified. If they are the same, we shall find the explanation of them in his evidence. If they are different and distinct transactions, then we know not who committed the trespasses, nor in what circumstances they committed them, and therefore they may be dismissed from our consideration.

6th. The next fact consists of menaces of an assault by stones and guns. Hiram Shearman and John B. Cochran testify that on one occasion in the night time while they were lying in wait as spies, "two men came out of Filley's house and walked along on the track. One of them whistled. Afterwards a third came out with a gun and bayonet. They spoke of tearing up or of widening the track. They said the cars run so slow we can do nothing; but if we can do nothing more, we can stone them like hell; and afterwards the witness heard the report of two pistols." I reserve comment upon the value of this testimony, as affected by the character of the witnesses, they being spies and informers; and remark at present, that the transaction, having been mysterious and having been observed in the dark, is probably exaggerated. But if it occurred, as has been described, then we know not who the two men were who came out of the house unarmed, nor which of them gave the signal, if the whistling was designed as a signal, (which is quite uncertain,) nor yet who the bandit was who was thus "doubly armed," nor which one of the ruffians it was who spoke of tearing up the track or widening it, nor which one consoled himself and his associates by the seasonable reflection that if they could do no more they could stone the cars, nor which of them fired the pistol, nor whether pistols were fired at the cars or not. The witnesses seem not willing to rely with confidence upon their own senses in that respect. But if we knew all this, it would still remain true that these three men are not identified as defendants in this cause, that their conversation implied no concert nor agreement with any other person to commit an assault on that occasion, much less any concert or agreemen to commit any assaults or depredations elsewhere and on any other occasion. They may have been banded together by previous conspiracy: but, on the other hand, they may have been only accidentally associated. This transaction therefore throws no light upon the issue of the alleged conspiracy.

7th. Trespass. An assault upon the cars with guns, proved by Wm. Clark. This occurred in June, '48. He says "the passenger train was fired upon, but without effect, east of the marsh at Michigan Centre, four or five or more guns were discharged, the feed of the engine was marked by a ball;" but neither this witness nor any other has identified any one of the defendants as having been engaged in that assault, or having any knowledge of it either before or afterwards. They are therefore not responsible for it, and the testimony leads to no conclusion concerning the existence of the alleged conspiracy.

8th. An obstruction of the cars at Michigan Centre, at a period not specified, is proved by Wm. Clark. "Pieces of timber were

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found on the track, and were brushed off by the brooms," and that is all that Clark knows. His evidence charges nobody in particular, and of course affects nobody.

I notice here, to avoid misapprehension, an allusion to a mail car, which is alleged to have been burned in June, '48. The only testimony on that subject is given by Wescott. The transaction is alleged to have taken place west of Jackson. This was beyond the actual bounds of the alleged conspiracy, or at least beyond the limits of the vicinity in which the defendants lived. Wescott stated the fact only upon hearsay, and even that hearsay gives us no information showing who burned the mail car or what were the circumstances of the crime.

Here then, gentlemen, are seven assaults on the cars with stones, one demonstration against them with a gun or pistols, one assault with guns, one obstruction with timbers, and one alleged burning of a mail car—in all eleven outrages. They are undoubtedly to be condemned. The actors in them ought to be and I hope will be detected and punished; but we have no proof that these outrages were committed by all or by any one or more of the defendants on trial here. We have no knowledge of the circumstances under which they were committed. We know that they were criminal, but we have no evidence that they were preconcerted nor that they were connected with each other; still less that they were connected with any purpose of burning the depot at Detroit or any other depot. On the principle, therefore, of rejecting such evidence as leads to no conclusion concerning the existence of the conspiracy alleged, I claim that these transactions be laid by altogether in the consideration of that question, or, at least, that they shall weigh no more than successive demonstrations of malice and guilt occurring within the region where the defendants lived.

I come next to consider *Overt Acts* in which defendants are claimed to be identified as offenders, and of which the attending circumstances are given or claimed to be given. Of this I notice, first the breaking of a hand car as alleged by the witness Horace Caswell. He states it thus: Filley, in May '49, wanted to borrow a hand car of Miller, agent of the Company, to go to Leoni; Miller refused. Filley said that a hand car should not stay at Michigan Centre, it would be broken every night. Caswell adds that, "a hand car was found broken in the morning. Filley, who had gone out before day light, returned and asked who they laid the breaking of the hand car to." I answered "nobody." He replied "never mind; the man who broke it knows who did it, and he probably is the man who lives nearest to it." Although I think this witness will be found unworthy of credit, I assume, for argument's sake, that this transaction occurred as proved, and I grant, also, that Filley admitted sufficiently the breaking of the hand car. Nevertheless it was an act of peevish, personal retaliation for a present unkindness. It proceeded from that act of unkindness. It had no origin before; certainly not in any combination with any other party. It had an immediate object and end—retaliation for that unkindness. Nobody advised it be-

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forehand, nobody had any knowledge that it was to be committed, nobody knew when it was committed nor participated in the trespass; nobody knew of it nor approved of it afterwards. The act was unjustifiable but Filley alone was responsible for it. He was responsible elsewhere not here ; in another way, not in a trial for arson. It is simply absurd to claim that this is evidence of a plot or conspiracy between Filley and other defendants to burn the depot at Detroit six months afterwards.

2. An obstruction of the railroad late in '49 or early in '50 claimed to be proved by Isaac S. Smith. He says the "cars had stopped at the White Bridge by reason of the obstruction of a mud-sill, as I supposed. I went down with Marsh, Terrill, Earl and Grant." Terrill and Grant are defendants. The proof does not show that the cars were obstructed by a mud-sill. If that was the case, Terrill and Grant, the only defendants implicated, certainly did not lay the mud-sill on the track. But Smith says farther that, on returning from the railroad, Terrill fell behind, and that he (Smith) saw Terrell putting a piece of strap rail on the track. Marsh says that Smith pointed out to him the strap iron lying on the track, and he saw Terrill walking away from it. You remember, gentlemen, that the track of the railroad was strewed with broken pieces of the flat or strap rail. It may well be doubted whether Smith did not mistake what Terrill was doing. These broken straps lying about the track were liable to be thrown upon it, by the cars when passing. Such a piece of iron could not throw the cars off nor impede their motion. But if that were the case, the mischievous act was one of sudden or, at least, immediate impulse. It was Terrell's own act, and no other person was concerned in it at the time, nor before, nor afterwards.

3. Amos Van Valen and George Knox relate, that on a summer afternoon, when they were driving their cows near the railroad in the vicinity of Marshall, they saw Dr. Ebenezer Farnham, one of the defendants who resided at Jackson, 40 miles distant from Marshall, but who was then at that place, walking on the track and swinging a piece of strap iron for the purpose, as they supposed, of knocking out the wedges. They described the motion of the Dr.'s arm in such a manner as to leave no doubt that they mistook his cane for an iron bar, and its playful motion for a trespass. However that may have been, the defendants even with an iron bar, under such a motion, could not have displaced a wedge that would not have been shaken out by a passing engine.

4. The prosecution dwell upon the burning of a culvert east of Filley's house, in June, '51, proved by W. P. Stanton. He says that he was at Filley's, "that Mrs. Filley come in and gave the alarm that the culvert was on fire. Stanton and Fitch went up to see it. Stanton proposed to get water and put out the fire. Fitch, with his usual smile (for he was always pleasant to me) answered, ' you will have to go out of this town to find anybody to put it out.'" Fitch's remark certainly does not show that he or any other person fired the culvert. It was a suggestion naturally arising from the aggravated

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state of public feeling in that town, but it proves no previous knowledge nor design on the part of Fitch, much less of any other defendant. The transaction, however, was one capable of being perverted to the use of the informers, and so it was noted in the diary of Phelps and Lake, to be the subject of admissions or declarations made by the defendants. Lake says that Phelps asked Filley how it was done. Filley replied "we can say the wind blew the rails into the culvert and the engine dropped fire upon them," but Lake informs us that Filley said that the culvert was burned one or two days before his conversation with Filley, that is to say in Feb. '51, whereas the culvert was burned in June '50. Phelps stumbled into the same error. He says "we talked about the culvert that was burnt. Filley said the wind blew the rails into the culvert and the engine set them on fire, and Champlin said if they lived there would be more of such accidents." But Phelps speaks of the accident as having occurred while he was gone to Niles in March, '51, and he locates the burning culvert, not at Michigan Centre, in sight of Filley's house, but at Leoni, four miles distant, where it most certainly did not occur. These contradictory admissions or declarations leave the transaction still more harmless than it was without them and certainly it is of no value in the present case.

5. A pile of lumber near the storehouse at Michigan Centre took fire during the last summer. John H. Dexter testified that he was in his room up stairs in Filley's house; that he heard some one come in, as he thought, barefoot, through the house below, towards Filley's bed room; that twenty minutes afterwards, he saw the fire; that he called Filley and told him that Grant's house was on fire; and that Filley and he went out to see, and Filley turned round and said " it is only a board-kiln; let us go back or some of the railrord spies will see us." Wm. H. Hudson testified that he fonnd naked foot prints about the board-kiln in the morning and he thonght they corresponded to Filley's foot. Hudson asked Filley if he burned the lumber. Filley replied "there shall be no fence made till they settle with me for the land." Isaac Minkler says that " Filley spoke of the accident and said the lumber took fire, that he smiled and seemed glad of it."

I will not speak of the danger of convicting men upon *smiles and seemings*, and upon inferences from indirect admissions; but will grant, for the sake of argument, that Filley fired the lumber which had been deposited there to build a fence, for the purpose of obliging the Railroad Company, to pay him for the land to be fenced; and then I say that the act was a secret misdemeanor. It was his own solitory act, resulting from his own individual impulse, committed for his own improper purpose of interest or of revenge, without accomplice, and without consultation or concert with any other defendant, and it therefore excludes all idea of connection with the alleged conspiracy.

6. Jacob Woliver describes an attempt to obstruct the cars near Michigan Centre, in September, '50. I and Corwin went to Fitch's yard and got an old mill iron that was lying there. We laid the bar

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in the frog of the switch. The cars did not run off. Corwin proposed it, saying "we will throw them off and keep them here to-night." The next morning Fitch said, "you must not take anything from my honse or they will suspect me. Take anything else you can find, but nothing from my house." Corwin is a defendant and if this statement is true, this trespass originated in his own solitary suggestion. No other defendant was an accomplice. It was unpremediated even by Corwin and Woliver. Fitch's knowledge of it was acquired the next morning and no other defendant ever knew it until the tranaction was proved in this court. Fitch's rebuke is evidently perverted so as to imply a pleasure in such depredations; but even as it stands, it effectually disprovea concert in the trespass and that is all that is necessary for the present purpose.

7. An engine, the Rocket, was thrown off at Michigan Centre about the 28th of October last. Sherman says, "I asked Corwin what was the matter. Corwin answered that Spaulding had said to him, 'Well, Bill, you have run us off this time,' and that Corwin added, I'll learn old Spaulding not to insult me. We threw them off and mean to give them hell right along for a month. I'll let old Spaulding know that there will be more done for a month to come than there has been for a year past." The word *we* is dwelt upon by the prosecution, but what does that "we" mean? If any body, it means, besides Corwin, Woliver and Sherman who are not defendants; that is, for the present purpose, it means Corwin alone. The threat is Corwin's only. The "Hell" threatened in that vocabulary word, so far as it has been explained here meant of obstruction of the cars and assailing them with stones or guns in Leoni and its vicinity and comprehended no more. By no fair implication can it be made to indicate the destruction of railroad depots at distant places. The threat was passonate, turbulent, malicious, felonious, fiendish if you please, for I do not mean to palliate the misconduct of any of these defendants. Nevertheless it indicates no pre-concert in any crime actually committed, nor certainly any ulterior design to commit greater crimes elsewhere, but, only to prosecute similar offences at the same point of conflict.

8. We have next a baffled design to detach some cars from the freight train, near Michigan Centre, in November, 1850, for the purpose of producing a collision between the part detached and the incoming passenger train. Sherman says, "I went to Terrill's store. A freight train came along very slow. Corwin then said, 'Let us cut 'em off, and the next train that comes along will run into the cars.' We went up to the cars to cut 'em off. The conductor was sitting on the top. Corwin said, 'G—d d—n him let us knock him off with a stone,' and looked aronnd but found no stone. Corwin said, 'Next time we will go down to the old tavern; there is plenty of brick there, and we will give them hell.'"

The crimial and unhuman purpose here disclosed was the unconcerted and unpremeditated thought of the defendant Corwin alone, and therefore the attempt to execute it in the manner described by the witness, furnishes no evidence of the supposed conspiracy.

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9. An attempt was made to displace the rails east of the marsh, at Michgan Centre, in September, 1850, according to the statement of Woliver. He says, "Filley asked me to go with him; 'I am going to give 'em hell to-night at the east end of the switch.' This was an hour afterter dark. Filley said, 'I must look round and see if any one is coming. He tried to get the switch bar loose but failed. He then fixed the bars so that one bar crossed the other, two or three inches. He said he 'guessed that was enough. We can do no more and we will go home.'" "His design was to injure the Company all he could, and he'd be damned if he didn't do it." Assuming this testimony to be true, this fearful act began with Filley, and ended with him and Woliver only. The explanation which accompanied it, showed that it was some motive of private malice or retaliation that prompted the transaction. No one else advised it; no one else knew of it. It is a transaction which deserves punishment in Jackson County but it has nothing to do with the case which you are trying here.

10. A lamp was broken in consequence of an obstruction of a culvert, in 1850. Woliver says, "we, (Filley and I,) went down west of Fitch's, and placed a tie in a culvert to break the lamp, and a mud sill across the track, and went back to Filley's. Next morning Fitch told me that he went down to the cars, when they had stopped, and that after the cars got under way, he and Filley got on behind and turned the breaks." Filley and Woliver alone were engaged in this transaction. We learn from the testimony elsewhere that Fitch arrived at home after the obstruction had occurred. The story of the breaks is puerile. There is, I believe, only one break at the end of a car. One man turns it with ease and effect, when the cars are under a slow motion. The cars had only begun to move, and were on an ascending grade. A pressure upon the track through the breaks could do no possible injury. They could have been used in this case only for a petty annoyance. Dear to Abel F. Fitch as his vindication in this case was declared by him in his dying hours, to be; dear as it is to the community in which he lived and evermore will be to me, I am glad that this charge, puerile and pitiable as it is, rests on the authority of Woliver alone. How worthless that authority is, we shall have occasion to see in the sequel of this argument.

11. It is alleged that the cars were assailed with stones on the occasion of a ball which came off at Leoni, on the 11th of August. The charge rests on the testimony of Woliver alone. He says, "E. J, Price, L. Champlin, Hewitt Davis and I were in the hall-room. Price said, 'The cars are coming; let's go and stone them.' We four went. Price and I together, Champlin and Davis further on together. Stones were thrown. I threw none, but I heard the rattling of the stones against ths care." Hewitt Davis says that he attended the ball; that no such transaction occurred; that he was in the arbor in which the ball was celebrated, and neither he nor Price nor Champlin left the ball for any such outrage, nor proposed to do any such thing. Ira W. Kellogg was door-keeper on that occasion,

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and he proves that Price, Champlin and Davis did not leave the ball room, when the cars passed. These witnesses agree that Wolive was in a state of absolute drunkenness in the bar-room during th whole night, which rendered him unable to move, and that he neve entered the ball-room at all. This aggression, then, must have bee an invention of the witness Woliver. Where witness is found t have stated a deliberate falsehood in regard to one material fact, th law applies the rule, *Falsus in uno falsus in omnibus*, and we ar relieved therefore from all obligation to account, in this cause, fo any crimes resting upon the evidence of Woliver alone.

12. Woliver described an assult of the cars with stones on ano ther occasion, much in the same manner. He says, "We wer together—the Price boys, Corwin and I. Corwin said, the cars ar coming; we will go and give 'em hell.' We threw stones at the car from Filley's orchard. I saw glass along the road the next day.' If the fact of this assault is to be assumed, then I have to remark onl this: that it implicates Price and Corwin—that it was an unpreme diated and unconcerted act, obviously disconnected with all othe outrages which preceded and followed, and it furnishes no evidenc in support of the pretended conspiracy.

13. The cars were again assailed with stones, according to Wol iver, in September, 1850. He says, "the Prices, Corwin and I wer together at Filley's house. The Prices and Corwins proposed t stone the cars"—(Woliver is always innocent! but he yields wit wonderful ease to seduction). "We went beyond Fitch's garde and there threw stones. We heard glass rattle and I found glas there the next day. The transaction is subject to the strictures be fore made.

14. An engine, the Goliah, was thrown off the track at Leoni Sherman states that Corwin said when the Goliah was thrown off h went home fearing it had'nt been done up right, but by morning h found it had been done up brown. H. H. Bingham says that h was traveling from Michigan Centre to Grass Lake that night; tw men passed him in a wagon. One of them spoke to the other abou being too late for the cars. He recognized Corwin's voice. H thought the voice of the other was Williams, but feigned. He re cognized the person of neither. If it were Williams, and he spok with a feigned voice, then the voice must have been unlike his; so if the voice was unlike that of Williams, then it furnishes no evidenc that Williams was the person who spoke. Williams is not prove to have been present at the throwing off of the Goliah or to have ha any connection with it. Corwin's action rests on his alleged admis sion. This, like his other crimes, was his own, and fails to cast an responsibility on the other defendants and equally fails in giving sup port to the alleged conspiracy.

15. One of the most important incidents in this strange and pain ful history is the burning of the wood pile at Michigan Centre Shearman relates it thus, "I was at Jackson. Corwin and Holcom were at Morrison's grocery. They told me they had laid a plan t get some flour; that perhaps I might not fall in with them, but if

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lid not I must keep still. We will go to night and take three barels of flour from the cars. We will set the wood pile on fire to divert the spies and take the flour while the fire is burning." The three then returned to Leoni. Holcomb and Sherman put up Corwin's horses while he went and examined the cars. "Corwin came back and said it was all right. One of the doors of the cars was half open. E. J. Price afterwards came up. Price proposed to drink. They drank at Filley's. Filley asked me if I was going a fishing. I said yes. Corwin got an axe. Price said he hadn't the first d—d thing to fight with. Filley handed him a knife and said he hoped they would have good luck and if they should want anything to drink when they came back there was a bottle, and, if that was not enough they knew where the key was. Corwin, Price and Sherman set the wood pile on fire and were arrested in pursuance of an arrangement preconcerted by Sherman with the agents of the Railroad Company, Sherman added that on their way to Michigan Centre, he asked what they were going to do with the flour? Corwin said, as big a man as Fitch is I'd as soon let him know it as not. He will keep me along with it and out of it."

I exclude for the present, for an obvious reason, the evidence of Phelps, involving admissions alleged to have been made by Fitch and other defendants, all interested in screening Corwin from this crime. That will come up more properly in another part of the case. Standing then upon the testimony of Sherman alone, it is apparent that this crime was Corwin's, and *his* only; that it was conceived by him, for his own felonious gain. Holcomb and Wells are not defendants. Price went into it on a suggestion at the moment. There is no reason to suppose that Filley knew Corwin's purpose, except what is found in the suggestion of Price, that it might be necessary to fight. I do not know whether fishing at Michigan Centre, in those times when railroad spies abounded, was supposed to require those who practised it to go armed, though I can well understand that they may habitually visit a tavern on their way out and on their return. But if Filley's remark connected him with the transaction, then the crime rests with him, Price and Corwin. It was unconcerted. No other defendant was consulted, nor was it connected with any other crime before or afterwards. Corwin's remark, that he would not be afraid to let Fitch know it, might lead to an unfavorable opinion of Fitch's integrity, but nothing more. But it may have been presumptuous on the part of Corwin. It manifestly proves in the most conclusive manner, that Fitch had no knowledge of the intended crime, and therefore places the transaction out of the evidence in support of the conspiracy.

16. The "Gazelle" engine was thrown off the track near the dry marsh at Michigan Centre, Aug., 20th, 1850. Woliver, as usual, was hero and historian. "I was at Price's haying for Filley. Filley came up and proposed throwing the cars off." (Of course, he did.) "We took an iron bar from Penfield's saw mill, and an axe from Price's—Filley, the two Prices and myself. We broke the chairs, moved the track aside, and threw off the western train instead of the

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eastern. I went back to Price's. They said no matter how many were killed. Damn you, don't you say a word about it." This transaction, then, if Woliver is to be believed, was suggested by Filley, adopted by the two Prices and Woliver, and executed by them all within the space of two hours from its suggestion. Only three defendants were engaged in it, and they suddenly, without the participation or knowledge of the other defendants. It was a desultory crime, and black and terrible as it was, was nevertheless disconnected with any other transactions, whatever their character might be. It not only furnishes no evidence of a conspiracy, but, as explained, repels the idea of such a conspiracy as is alleged. But this transaction of the Gazelle re-appears in two other versions.

First, there is an attempt to connect the defendant, Willard W. Chaplin, with it. Taylor produces a paper which he says was found sticking out from under some wood in the culvert when the transaction occurred, which is marked, "The Price Boys Warning." That extraordinary paper is in these words:

Michigan Centre, Aug. 19, 1851.

MR. PRICE—Sir—I want you to be at the mild stake, this side Leoni, on Monday night at about half past 9 o'clock. We intend to run the cars somewheare's about there; be sure and be there at the time.

By order of the Committee, W. CHAMPLAIN.

It was permitted to be read, upon the opinion expressed by Holmes that it was in the hand writing of the defendant, Willard W. Champlin, but at a subsequent stage of the trial, Holmes, who appears to be an honest and a truthful witness, came upon the stand and declared that after farther examination of the writing, and comparison of it with other known writings of the defendant, he was of opinion that it was not; that he thought it resembled more the hand writing of the witness Taylor, who produced it, which he knew well, than it did that of the defendant Champlin. Michael Coy, who knows Willard Champlin, declares that it is not his, as indeed it manifestly is not, since the signature, which is without any affectation or disguise, differs both in style of execution, and in the christian and surnames assumed. I do not press the testimony of James Champlin on that point—he was evidently illiterate and imbecile. The paper, then, in the first place, is not in evidence, being disproved by the same witness whose testimony procured it to be admitted. Secondly, it is a forgery, and being such, is pregnant with warning against yielding credit to the tales of venal and prostitute informers. It is needless to remark, that it is to be presumed that Champlin would have been himself present at the time appointed, if he had, by order of a committee, or otherwise, sent this notice to the Prices; but Wolivar proves not only that Champlin was not there at all, but that the proposition to throw the cars off was made to the Prices by Filley, as a new one, not on the day before the transaction occurred, but on the same day, and within an hour before it. But the throwing off of the Gazelle, in the language of these spies, has furnished

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a basis to predicate a plot upon, and this has been artfully done by Wescott and Lake. Wescott says, that on the Sunday when Sacrider had his duck pie at Filley's, he overheard Williams ask Filley for money, and Filley replied, "I thought the Gazelle matter was settled." Williams made some reply not heard, whereupon Filley said, "Fitch has paid you $12, and I have paid you 10, and I'll now give you 3, if that will make it right;" and thereupon Filley, after obtaining from Wescott change for a $5 bill, paid Williams $3. Lake, at a far distant period, procures and offers confirmation by saying that Williams gave him a history of the throwing off of the Gazelle; that he said that "Fitch planned it; that Filley, Wolivar and Corwin executed it; that he, Williams, lent them the bar with which to break the chairs and remove the track, and then went to bed so as to be able to swear that the Prices slept all that night with him." A word or two will dispose of this joint invention. If Williams earned $25 by going to bed and leaving others to commit the crime, how much were they to be paid who performed the labor and incurred the entire danger? Again, Wolivar, who was of the party, excludes Fitch altogether from a knowledge of it, and excludes him as well as Williams and Corwin from all agency in it, and says that he himself got the crowbar which was used, and that he got it not from Williams, but from Penfield's mill, which was impossible, if the history said to have been given by Williams was trne.

Gentlemen, the long discussion which I have bestowed upon this one of many incidents in the history of this pretended conspiracy will not be lost, if it shall serve as a caution that the way of this prosecution has been traced by fraud and cast up by perjury.

17. I come now to one of the most remarkable portions of this most extraordinary case, that of the alleged delivery of pistols by the deceased defendant Fitch from his bed room window. Joshua Wells testifies that he and Miner T. Laycock, one of the defendants, "received pistols from Fitch at his bed-room window, in the month of August, 1850." He says, "it was just dark, and Fitch after delivering the pistols, went into a shed and there delivered to the witness Caswell a rifle pistol and told them to go down close to the cars at the dry marsh and to get as near the engineer's house as they could." Caswell asked Fitch if the pistols were loaded, and he said they were and told them to shoot right through the engineer's house, and Caswell said that he afterwards tried with a ramrod the pistol which was given him, and found it loaded. Caswell says, "Fitch handed me a rifle pistol in the shed." Laycock and Wells each had a pistol. Fitch wanted us to go out near the marsh and shoot at the engineer. I asked if the pistols were loaded. He said, "yes, with ball." Deloss J. Holden says that Fitch once admitted to him, in speaking of this transaction, that he gave Wells and Laycock pistols, but they were loaded with powder only, to frighten people in the cars or on the engine. Elizabeth Hargrave says that Laycock told her, in speaking of the complaint against himself, that they had got pistols or guns out of Fitch's window; that Fitch told them they could shoot, but they did not shoot." Barnet Culver says that Laycock

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said, in speaking of some declarations imputed to him, that all he had said was, that Fitch had handed him and two others pistols out of the window and said "shoot 'em, damn 'em;" but they didn't shoot.

Gentlemen, you will take notice that Wells and Caswell, before coming here to testify, were taken into employment by the R. R. Co., at salaries, I think, of $15 a month, and that Laycock was taken into their service at the same time, but was afterwards discharged by the Company and then charged as a defendant in this indictment. You will take notice of another fact. Caswell says the rifle pistol delivered to him is one which Laycock had before borrowed of Moulton. You will remember also that Fitch had been a Captain of dragoons, and that his pistols and sword were kept always upon the desk containing his papers, resting upon the safe in his bedroom. You will now oppose against the evidence given by the prosecution, the fact that Caswell is not only an accomplice taken into favor and rewarded by the Company, but that he stands self-impeached; First, by the manner of giving his testimony. After giving a succession of employments that he followed, changing so often as to prove himself little better than a vagrant, he said "that he went to cutting grubs for a darky." Being pressed for an answer who the darky was, he replied, "I have been fooling now, I didn't cut no grubs." He denied that he had been charged with arson in the place he left before coming to Michigan Centre, yet he refused to answer whether he had not been examined on a complaint of arson, upon the ground that it would subject him to punishment for a felony. I understood the Counsel for the People to disavow a claim of credit for his evidence.

Anson H. Delamater, than whom the State, seems to me to possess no worthier citizen, says that Joshua Wells told him in June last, when speaking of this charge, that he did not know anything against Fitch, that he wished himself dead a thousand times before he got into this scrape. J. V. Carmer, an equally respectable man, says that Joshua Wells told him, when speaking of the attitude in which he stood as a witness to be examined, "unless I had come out for the R. R. Co., I should now be where they are," that is, in jail under an indictment for burning the Depot. Carmer adds: "I said to him I understand that Fitch requested you to shoot one of the engineers." He said it was not so, and he never thought of it. As for Laycock, the declarations imputed to him are sufficiently contradicted by the fact, that refusing to testify for the R. R. company in corroboration of Wells and Caswell, he lost his position in their employment, and took his place among the defendants, and "is now where they are." You are prepared then, I think, to recur with favor to that touching scene in the trial when Amanda Fitch, the adopted daughter of Abel F. Fitch, she, of whom he said in the very last words he uttered—"poor dear little Amanda, I had quite forgotten her, remember me to her,"—I say you will recall with pleasure the occasion, when that child, of only fourteen years, appeared upon the stand and gave her account of the transaction of which venal informers have manufactured a tale so full of horrors. "Mr. Fitch was standing by his desk. Laycock and

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Wells came to the window which was open, Laycock said "Fitch, I want to borrow your pistols." Fitch took them down from the desk, wiped them off and handed them to him. Laycock said "Fitch, I want some paper." Mr. Fitch "asked me to get some paper," and then taking up a piece of newspaper lying by his side, he said, "there is some," and haned it to Laycock. Laycock and Wells withdrew.— Mr. Fitch resumed the examination of his account book, then laid it by, took up his flute, sat down in the sitting-room and remained there until a period too late to allow of the occurrence which is alledged to have taken place in the wood-shed." You remember the womanlike firmness and sincerity with which this testimony was given. You remember how, during hearly half a day, this child baffled the studied arts of the able counsel, in their attempt to entrap her, and to involve her in self-contradiction.

I do not dwell upon the attempt to contradict Amanda Fitch by the testimony of Euphemia Coy, on a point which was irrelevant and trivial, to wit, the alleged assistance rendered to Amanda in preparing her testimony, by her mother. That mother has appeared here, and has been offered to sustain her daughter's denial of such assistance.

Gentlemen, you have heard Amanda Fitch's recital confirmed, as it is by Delamater and Carmer, and by the scarcely less than martyrdom of Laycock. Weigh it against the testimony of Wells and Caswell, impeached as they stand by self-contradictions. There is perjury on one side or the other. It is for you to decide whether it is on the informers who sustain this prosecution, or on the part of this child. It grew into a proverb in ancient Rome, that in seasons of public confusion a citizen could not be quietly undone, nor could his family escape from being involved in his ruin. The defendant Fitch has been hurled from his estate into his grave. His wife, when she appeared upon the stand a lawful witness, to redeem his name from reproach, has been refused a hearing because she had become a widow too late. Complete, if you will, and if you can, this domestic desolation, by stamping the brand of perjury upon the brow of that cherished orphan child; but remember, before you do so, that you and I, among those various excursions which have relieved the weariness of this protracted trial, once visited together the state prison of Michigan, and that we found there one hundred and fifty malefactors, all of whom were men, and that within those dreary walls there was found not one woman.

Thus, there are seventeen overt acts attended by circumstantial explanations, to wit: One breaking of a hand-car by Filley alone, rejected as a trivial, personal and unpremeditated transaction. One obstruction by a mud-sill, and by strap-iron, charged against the defendant Terrill alone, insufficiently proved, and trivial if proved. One like charge against Dr. Farnham, rejected as both trivial and false. One burning of a culvert, rejected because the evidence is insufficient and contradictory. One burning of a pile of lumber, an act of personal retaliation by one of the defendants alone. One attempt to obstruct the cars by placing a spindle in a switch, in which only one defendant was concerned. One throwing the engine "Rocket" from the track, which was Corwin's individual act. One design by Corwin to detach the freight cars, proceeding from sudden impulse, and not carried into

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execution. One obstruction of the cars west of the switch, by Filley and Woliver, without concert with any other defendants. One breaking of a lamp and obstruction of the cars by a mud-sill, the act of Filley without concert with other defendants. One alleged assault of the cars with stones, at the ball at Leoni, actually disproved. Two assaults of a like kind by the Prices, Corwin and Woliver, acts unpremeditated and without concert. One throwing off the "Goliah," the act of Corwin alone. One burning of a wood-pile by Corwin and Price, to cover a larceny for the benefit of Corwin alone. One, throwing off the "Gazelle" by Filley and the Prices, without the knowledge of the other defendants; and the exaggerated pistol scene at Fitch's house, disproved and rejected. Among these transactions, Filley is compromised in four distinct cases; Corwin in six, and the two Prices in three. No other defendants were connected with them by actual co-operation, no one case of preconcert by any other defendant with the aggressors has been established, not one instance of guilty knowledge by any of the other defendants has been proved, nor has a case occurred among them all, of an aggression committed in pursuance of a previous design or plan formed or projected, even by the defendants who committed it. You will readily agree that if a conspiracy, such as is alleged by the prosecution, did exist, Woliver, Caswell and Sherman were guilty parties in it; yet you see at once that, although you could convict them of so many crimes committed, by their own confession, you could not for a moment hold an indictment against them charging a previous *conspiracy* to commit the acts which they have confessed. They cannot be innocent of such a conspiracy and leave the defendants guilty; the defendants cannot be guilty of a conspiracy if these witnesses are innocent of it. The overt acts then, which have been given in evidence neither prove, nor tend to prove, the existence of the alleged conspiracy. Let me not be misunderstood in regard to them. Not only do I rejoice that no human life has been lost nor limb broken, but I condemn these outrages as atrocious, cruel and inhuman. Their only alleviation is that they proceeded from passion, and passion, in individual men, dark and stumbling, is blinder still in masses, where a sense of individual responsibility is lost. But that constitutes no justification. I sympathise in no hostility to the Michigan Central Railroad—in no hostility to corporations—in no hostility to wealth. I rejoice in the completion of every new link in that chain of internal communication, upon which I rely to bind together the ever-changing boundaries of this vast empire. I would indeed, hold corporations as I would private citizens, to the practice of justice and moderation; but I know of no legitimate redress, in a government of laws, but redress by law and by constitutional change of laws. I regret that these aggressions remain unpunished. I trust they will yet be punished, and that the majesty of the law will yet receive its ample vindication. But it belongs not to you, nor to me to effect that vindication. These aggressions were committed in a foreign jurisdiction. Our present duty in regard to them is performed, when we have shown that the aggressions which have been committed have no relation to the question under consideration here.

The prosecution, Gentlemen, apprised you that, in addition to the

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overt acts of the defendants,they would give in evidence the fact that numerous,even daily, unlawful meetings were held by them, in which they framed the stupendous conspiracy which is proclaimed to have existed, contrived how and when it should be executed; that in those meetings they agreed upon the aggressions which should be committed, assigning to each defendant his part, and that in those meetings they resolved that if they failed to bring the company to their terms, by these aggressions, that they then would effect that purpose by the burning of edifices and structures throughout the whole length of the road. The prosecution alleged farther that in these meetings solemn resolutions were adopted to defeat the administration of justice, by combination, fraud and perjury; and, finally, that in those same assemblies the defendants severally contributed inventions and horrible machines for the work of desolation and destruction in which they were engaged. This was the promise of the prosecution. Days and even weeks were spent in the attempt to fulfil it, and with what result? I cannot descend into a minute examination of the shapeless mass of evidence laid before you to redeem this promise—but I shall call your attention to a few marked and distinct features of it; and upon these I shall challenge contradiction.

1. There was never a concerted nor even an appointed meeting of the defendants.

2. There was never an unlawful assemblage of the defendants.

3. There never was a meeting or gathering of all the defendants, nor of half of them, nor even of a fourth of their numbers.

4. Those who came together at any one time were never the same persons who came together on a previous or on a subsequent time.—Whether the number who came together was greater or less, they came together always in the most public places. They came together in the bar-room, in the nine-pin alley, in the street, at the post office, in the day time, and in the early hours of the evening.

5. They came together casually, on occasions of sheer broad publicity, on Christmas, at shooting matches, on the arrival of the cars, at balls, at law-suits. They came together as accident determined, on their way to or from the mill, from the blacksmith's shop, from the village store. Their assemblages, such as they were, were open to all comers, whether village gossips or travellers. There was no tyler at the door. It stood wide open. These modern 'forty thieves' had no 'open sesame' nor 'close sesame' to secure themselves against intrusion nor against detectien. They were neighbors who came together,sometimes two, sometimes three, four, six, or eight; most frequently in the only village bar-room, and the traveller and the laboring man of the village whether white or black, whether in the interest of the Railroad Company or against it, and free admission. There never was a meeting organized, there never was a resolution passed nor a debate opened. Joshua Wells gives you an idea of their conversation on the one subject of common and engrossing interest. "There was something said about the Railroad being a monopoly, that a feeling was getting up against the Railroad Company that would hold against them for a long time, because they hired help very cheap and didn't pay wages enough; that it had a tendency to render wages low, that he heard not much

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said about cattle being killed." They planned nothing, neither the burning of depots nor assaults upon cars with stones and muskets. If they discoursed in threats it was in individual, impulsive, passionate, but idle threats. It was just like what often occurs in every village bar-room in the State and in the United States. "They talked by squads and drank by platoons." To hold such gathering of citizens to be seditious meetings is a construction forced, false and fraudulent. To present such meetings in a court of justice as evidence of a conspiracy is to conspire against the freedom of the citizen.

If then a conspiracy has existed in Leoni, the evidence of it is to be derived elsewhere than from overt acts committed or from deliberations of meetings held there. And this brings us to the proof, 3dly, of individual declarations and admissions. In regard to this class of testimony, I am obliged to confess that the difficulty consists not so much in a deficiency as to quantity or perhaps even of directness, as in the absolute unreliability of the testimony itself. The Railroad Company unable to convince the farmers of Jackson county that half price was enough for cattle destroyed, and unable to arrest the depredations which were committed by way of reprisal, resorted to a system of espionage. On the 10th of August, '49 they offered a reward of $500 for proof sufficient to convict any person of any one unlawful overt act, past, present, or to come. I am not complaining of this. It becomes necessary to open this system before you for the purpose of testing the value of the evidence which has been procured by it. The Railroad company employed a corps of spies to watch and circumvent suspected citizens, paying them compensation, varying from seven shillings and $2 per day or night, to $40 per month. How large that corps was is unknown. But it numbered one hundred at one time, and no less than fifteen of its members have appeared here as witnesses to sustain this prosecution. Here they are—Phelps and Lake, recently discharged from the State Prison; Van Arman, a lawyer from Marshall;—Clark, a member of the legislature from the same place; Cochran and Sherman, laborers; Dixon, a sheriff from Marshall, acting in the character of a wheat buyer; Holden and Gillespie, gentlemen; Taylor, an employee of the Railroad company; Woliver, Wells and Caswell, accomplices in the crimes they denounced; Wescott, a discharged barkeeper; and Faulkner, a carman. You see that they are called from all the various occupations of society and all the conditions of life, from the state prison and the brothel through the classes of merchants and farmers to the sheriff's office, the bar and the legislative halls. The witness Phelps, enlisted among the last, took rank at the head of the corps, displacing Wescott, and with him was entrusted with the disposal of the patronage of the company as a broker. Phelps employs Lake. Wescott employs J. Wells. Wescott offers J. Tyler a good place "if he will come out for the Railroad Company;" while Michael Coy is told by Phelps that if he will come out and "swear for the company there shall be no lack of money in his pockets." This system was in operation six months. It is no wonder if oblivious memories have been awakened, malicious memories quickened and feeble memories strengthened. All has been activity; all was activity from the beginning.

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'Some tell what they have heard or tales devise,
Each fiction still improve with added lies."

A corporation, enjoying a monopoly of carrying the persons and property of citizens over a great national highway and deriving from it an income exceeding by three fold the revenues of the State, has become, in this season of alarm, a power behind the state greater than the state itself; and now we see the wisdom of a saying of the son of Sirach, himself a sovereign. Beyond a doubt his own court was infested by a nest of caterpillars like these when he admonished the unwary; "Curse not the king; no, not in thy thought; and curse not the rich even in thy bedchamber; for a bird of the air shall carry thy voice, and that which hath wings shall tell of the matter."

Regarding these witnesses as mere spies and informers, unconvicted of crime, uncontradicted and unimpeached, what is their moral standard in a virtuous commonwealth? Hear what Addison said, for he was not only a moralist but a Secretary of State, "A man who is capable of so infamous a calling as that of a spy is not very much to be relied upon. He can have no great ties of honor or checks of conscience to restrain him in those *covert* evidence, where the accused has no opportunity of vindicating himself. He will be more industrious to carry that which is *grateful* that that which is *true*. There will be no occasion for him, if he do not hear and see things worth discovering; so that he naturally inflames every word and every circumstance, aggravates what is faulty, perverts what is good, and misrepresents what is indifferent. Nor is it to be doubted that such ignominious wretches let their *private passions into these their clandestine informations*, and often wreak their particular spite and malice against those they are set to watch." If this is wise morality, (and it has been universally received,) and if there is sound philosophy in the old Spanish proverb, "bad the crow, bad the egg," we shall be at no loss to appreciate the evidence before us. It is a mountain of falsehood with here and there a grain of truth.

When I look upon the men who occupy the place on my right hand, and recognize among them pioneers of the State, its farmers, its mechanics, and citizens; and then on this legion of spies, and find there on the witness' stand convicts yet wearing the look and the gait contracted in the State prison, and see others come reeking from the stews of the city; I ask myself, can it be real? Does honesty dwell in the penitentiary and crime stalk abroad over the State? Is the city pure and the country polluted? Has truth fled from the hearth of the farmer in the country and taken shelter in the purlieus of the metropolis? No! I am not in Michigan. I am in Venice, where an aristocratic senate keeps always open the lion's mouth, as well by day as by night, gaping for accusations against the plebeian and the patriot. I am in Syracuse and see before me the dungeon which the tyrant has constructed with cells in which he has imprisoned those he fears, and constructed its walls on the model of the human ear, so that its curious channels convey to him even suppressed groans, and sighs, and whispered complaints.

But first, where is the truth of these accusations to be tried? They are accusations of local offences which ought of right to be tried at

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home where the accused party live, by a jury of that vicinage, and not elsewhere nor by a jury of strangers. The accused ought to be at large on bail,to procure the evidence to confront their calumniators; and yet they have been dragged 70 miles from their homes, out of their own county of Jackson, through the intervening county of Washtenaw, and put on trial for local offences, here before a foreign court, by a jury of strangers, in a community which, in judgment of law, is to them a community of aliens and enemies. Nay, more, when sickness has befallen a juror, and when disease has prostrated a defendant in his cell, the prosecution have complained of the cost of delay and vehemently reproached the prisoners because they would not surrenrender almost the only constitutional rights left them of being tried by twelve jurors and by no less, and of being present in person during their trial. Rut I mistake. This is not the act of citizens of Detroit, for they are a humane people. This is not the act of Michigan, for it is a just and benignant commonwealth. It is not the act even of the Michigan Central Railroad Company. It is the act of agents of that corporation who have dared to misuse their powers and to assume the police authority of the State. I know and I feel well assured, that the acquittal of these defendants will be received with satisfaction by the citizens of the metropolis, and will be approved even by the corporation itself; while it will go abroad with healing on its wings for public discontents pervading the State.

We inquire now whether the existence of the alleged conspiracy is established by the admissions and declarations of the defendants: and the inquiry involves the credibility of the witnesses by whom they are proved. Wm. D. Wescott contributes the greater part of the evidence. You recognize in him the early leader of the legion of informers. He was displaced to make way for the superior merit of Henry Phelps. Wescott is rendered a suspicious witness, first, by his attidude of hireling informer. His testimony begins at the time when he went into the employment of the Railroad Company, in that character, at the rate of $40 per month. He still retains the place and its emoluments. Secondly, he is discredited by his former life.—He was indicted for perjury at Mackinaw, and the indictment abated by the death of Dr. Rankin, the prosecutor, who was an eminently respectable man. Wescott alleged on his examination that Dr. Rankin was himself indicted for perjury in preferring the complaint, and that he committed suicide to escape conviction. It was proved by the clerk of Mackinaw that Dr. Rankin was never indicted, and that he died a natural death. 3d. Wescott is discredited by his personal and groundless malice against the deceased defendant Fitch. Mr. Toll and Mrs. Toll proved that Wescott said last summer, that "Fitch was a notorious scoundrel; that he would appear as a friend to your face, and the moment you turned your back he would run a dagger to your heart, and that he would yet see Fitch peeping through the grates of the State Prison." Mr. Tyler declares that Wescott told him that a web was being woven around Fitch that would draw him into State prison. Such is the character, and such is the temper of the witness. He is rendered still more unworthy of belief by his denial of having uttered the malicious remarks against Fitch which have been proved.

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He shows himself equally timid and false. He would have us believe that his life has been in continual peril while he has been prosecuting his private service in a public cause. But all these perils are proved to have been fabricated and false. Thus he has entertained us with a pretended plot, by several of the defendants, in which it was contrived that he should take a seat at the card table near the window, in Filley's house, and that the defendants should then assassinate him, by a simultaneous assault with stones through the window. The very heap of stones which was to be used was pointed out by him to a witness, and they probably were deposited there with his own hands. However that may have been, you have seen the spot. You have seen that a piazza some three feet wide intervenes between the window and the high close-latticed verandah. No mortal arm could hurl a stone from the verandah through the window with force enough to commit an injury. No mortal eye could see through the verandah, nor mortal force throw a stone that would reach through the verandah and the window. But, Gentlemen, you will recollect that Wescott obtained his knowledge of this plot by drawing himself through a hole in the wall and listening to the conspirators through the floor in the bar-room. Unfortunately for Wescott's veracity, Mr. L. A. Hildreth, who opened that hole in the wall for the purpose of driving the joints of a water pipe, testifies that it was not large enough for a man to enter.—Darius Clark comes to the relief of Wescott and testifies that in November last Wescott pointed out the place to him and that it was then as large as now; but Ammi Filley, Jr., a lad of 14, proves that Clark must have erred in date, because on Christmas Day, when a piece of coin had dropped through the floor in the bar-room, he found it impossible to pass through the aperture to find it. And this child is corroborated by the witness who first opened the aperture at a day later than that fixed by Clark. Wescott described a second peril—that, pursued by an infuriated man with a ferocious dog through the deer park, he plunged to his armpits into the mud and mire of Wolf Creek, and he gives us, for confirmation of that peril and escape, his assertion, that his wife removed the mud from his clothes. I admit that some unknown person lurking on the watch was chased by a dog into Wolf Creek, but I still must withhold my belief that Wescott was the fugitive. I can scarcely believe that a man who would be thus engaged could have a wife, much less that any woman who is a woman would have lent her hand to take a stain from his garments thus contracted. Wescott gives a touching narrative of a third peril through which he passed. A quarrel arose in the ball alley between one of the defendants and C. Palmer. Wescott represents, or causes it to be proved, that Fitch and himself were standing at the door, looking on upon the strife, and that Fitch afterwards remarked, that, if he had known Wescott at that time to have been a spy, he would have thrown him in among the combatants that they might have beaten him to death. Unfortunately for the effect of this fearful narrative, it is disproved by Almon Cozier, who says that neither Wescott nor Fitch was at nor near the door of the ball alley, from the time when the controversy began until the combatants had retired to adjust it, as I presume, over a bottle in Filley's bar-room. The testimony throws but a dim

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and shadowy light over the fourth and last critical escape of the ci-devant leader of the band of spies. The *Tribune* in this city published on some authority, "A leaf in the history of the conspiracy," and it was republished generally by the papers throughout the United States. This leaf revealed the dreadful fact that one of the informers was actually present, in disguise, at a regular meeting of the conspirators, in which it was solemnly resolved to put him to death, and that the *job* of executing that sentence was put up at auction and sold to the lowest bidder at $100, the bidder reserving to himself the right to decide on the manner of execution, but being bound to perform it within four days. Wescott denied that he had put that report in circulation. William Harsha, one of your your most respectable citizens, came upon the stand and offered to testify that Wescott, referring to the publication, by implication confirmed its truthfulness and its application to himself. But the rules of evidence, insisted on by the prosecution and sustained by the court, excluded the testimony.

I proceed to examine the evidence of Westcott, promising you that, in the first place, what there is of it that is not contradicted directly or by internal evidence, is worthless; and, secondly, that what *has* any pertinency *is* thus contradicted. His testimony is to this effect: that, when he repaired to Michigan Centre, in the fall of 1850, he placed himself on an apparent footing of intimate friendship with the defendant Fitch; that Fitch under those circumstances, gave him a narrative of what "the boys" had done, in 1849; that they had secreted themselves in timbered lands, then rushed out and after the hand-car had passed obstructed the cars; that Fitch said the "boys had stoned the cars, had placed stap-iron between the joints of the rails, and mockingly said also, that Elder Limbocker and Priest Foster, committed this depredation; that he had remonstrated with them, but they were hard cases and would not desist; that in speaking of the accident, which had befallen the Gazelle, he said the Locomotive got dry, and ran down to the marsh for water; that he had advised the boys not to throw trains off at the dry marsh, as that would be too bad; that one morning at sunrise, at Michigan Centre, when the cars were due, Fitch looked up into the sky, and predicted that they would not arrive till afternoon; that this occurred, as Wescott says, on the day when the cars ran off at Galesburg, ninety miles distant; that Fitch said he had written to Chicago, and had ordered handbills warning people not to travel on the road, on account of the obstructions; that this was the only way to bring the Co. to terms, and make them pay for cattle; that the R. R. Co. had offered a reward for Fitch's detection in committing depredations against the Co.; that suppose he should be arrested, he could find witnesses enough in the State, if not in Jackson Co.; that they never would convict him; that Fitch said he would shoot Wescott on the stand, if he should swear against him; that his friends would do so, if he should be unable to do it himself; that he could prove any thing he wanted; that he had friends who would stand by him, who were little suspected, and named among them Harry Holcomb, Col. Delamater, and many others of the most respectable citizens of the

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county in which he lived; that he would defy all hell to convict him, and that he could never lack witnesses."

So Wescott testified that Filley, when speaking of the accident to the Gazelle, said that they had got a big coon but had lost its tail; that the damned railroad had sued him for timber, that in ten days he would make them wish that a Fitch or a Filley had never been born; that Filley said the Co. had sued him for stealing lumber, that they would want more, for he proposed burning the depot at Jackson; that on the same day Filley proposed to Corwin to burn the depot there, saying that there were shavings around it which would make it easy.

Thus far the admissions or declarations proved by Wescott, if they have been made, are valueless, for they show nothing more than feelings of hostility on the part of Fitch, and of passion and hatred on the part of Filley. They show no connection of both of those defendants with any trespasses which were actually committed, nor any connection between those defendants themselves; still more, no connection between either or both of those persons and the other defendants.

I pass to some more material statements of Wescott. He says that at Barrett's lawsuit, Fitch was active in behalf of Barrett, as a volunteer. Fitch, in fact, attended as a witness, and as this is a free country, Fitch had a right to give in evidence facts within his own knowledge, and even to utter his opinions on the merits of that controversy, and to express his own sympathies with either party. Wescott represents that Fitch told him then, that "he would like to take him into the lodge that night; that there was to be something up;" that the next day he asked Fitch what was up, and Fitch replied, "there was a fuss the night pefore, (alluding to an obstruction of the cars by a mud sill, and the breaking of a lamp,) but damn'em I I told'em I wasn't at home."

We have proved, that after the law-suit, Fitch attended a democratic Caucus, and still later, a theatrical performance; that he arrived at home after the accident to the cars had taken place, and that he went down with the defendant Lemn, to see what had occurred. Wescott further says that Fitch told him that he "had advised Barrett to bring three suits against the R. R. Co. for cattle killed, not meaning to have them tried, but to fuss in the law till the spies should leave, and then they would have a grand smash, worth a dozen law-suits, and the Co. would begin to think "there was a God in Israel;" that Fitch, subsequently, in his parlor, explained to Wescott alone, what "was intended by this grand smash;" that he was determined, with the boys, to bring the Co. to terms before the State Fair was over; that, in order to show that the prevailing feeling was not a local one, he intended to throw the cars off at the white bridge at Jackson, at the dry marsh, and at the high embankment, "three places of peculiar danger;" that "he would thus kill a hundred and fifty passengers at the State Fair, and that thus they would bring the Company to terms; and if this wouldn't, then, in God's name, what would? If we fail in this, then, God

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damn 'em, we'll burn 'em out." Wescott says, that Fitch, in the same connection, "offered him a thousand dollars to burn the depots at Detroit, Ann Arbor, Jackson and Niles, or two hundred and fifty dollars for burning either, saying, that they had men who could do it, but it could be better done by strangers; that he was determined to make the Co. pay a hundred thousand dollars or come to terms; and he adds, that Filley also mentioned the grand smash which they intended to make at the State Fair, and said, that if they could get the entire train off at the dry marsh, there would be no need of coffins; that the passengers would be buried deep enough without the aid of sextons; that if they could get the cars off at the high embankment, while the survivors were looking down upon the mangled remains of the dying and the dead, it would be a good time to feel of Uncle Sam's mail bags; and that the Railroad Company would be liable to Uncle Sam for the detention of the mails."

Who believes Abel F. Fitch to have been insane? No one. Who believes that a sane educated man, living in such a country as this, could conceive a purpose so atrocious, or that, conceiving it, he should impart it to another? Abel F. Fitch, was a man of education, position and fortune—in all these respects surpassed by few in Michigan. He was a public officer, respected and honored at home, with troops of friends bound to him by clasps of steel, in various parts of the State. Is there no truth in the ancient maxim: "*Nemo repente fuit turpissimus?*"* Is there any height of crime towering above what is here alleged to have been reconnoitered? Four months ago, Abel F. Fitch came here an object of public fear and hatred, borne down by the scorn of his country, and of mankind. He went in and out before you. You saw him every day harrassed, insulted, reviled, by such testimony as this—you saw him meek, gentle, confiding, cheerful, and enduring. You know his death. It was peaceful, tranquil,—the death of a man loving all good things on earth, yet resigning them cheerfully in hope of better things in heaven. Judge between him and his venal accuser, by the probabilities arising out of such a life and such a death.

Who does not see that the conception of such crimes is absurd, because it exceeds the experienced depravity and folly of the human heart. The depots of the M. C. R. R. Co. were safe against the incendiary, if the conflagrations were to be postponed until the commission of a hundred or a hundred and fifty murders. Where was the defendant Fitch to find shelter after the commission of these fearful crimes? No one has ever heard of that projected "grand smash" but Wescott. On the very first day of the State Fair, when it was to take place, Fitch with his wife and daughter, Col. Delamater and other friends, arrived at the State Fair by the cars that were to be thrown from the track. A portion of his family and friends came by the cars on the second day. They all returned by the cars on the third day; and it happened that there was no train of cars passing between Ypsilanti and Michigan Centre during the three

* "No man reaches the height of crime at once?"

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days of the Fair, in which himself or some of his family or immediate personal friends were not found.

The remark imputed to Filley, that there would be no need of coffins, bears intrinsic evidence of being coined by Wescott's own turbid imagination. So the remark about the scene, where the survivors should be looking down on the mangled remains of the dead and the dying, while the conspirators should be feeling of the mail bags, and subjecting the R. R. to damage to Uncle Sam for the detention of letters, could have proceeded from no other brain; and evidence enough that these high swelling and gigantic words, with their lame and impotent conclusion, never proceeded from the mouth of Filley, is found in the fact that Wescott equally draws the same terrific phrase from off the tongue of Wm. Corwin, a teamster, and from off the lips of Orlando D. Williams, a common stone mason.

Of course, gentlemen, though these declarations and admissions were not made by Fitch and Filley, Corwin and Williams, no one can prove that fact, because they are alleged to have been made to Wescott by these parties in private conversations with him alone. But, fortunately, when a witness stands impeached in character, his testimony is to be rejected, unless it be confirmed, and when he is contradicted in one essential fact, that one contradiction overthrows his entire evidence. You have had his refutation and contradiction in regard to several essential facts. There are more such refutations. We find one in the celebrated window scene. Wescott testifies that one evening in August, 1850, he crept into the court-yard of Fitch's house through the space made by displacing the lower end or base of one of the pickets, while it hung by a nail on the upper bar, drew himself under the bed-room window, looked through the gauze curtain, saw Mr. and Mrs. Fitch retiring to bed, and there heard him say to her that "they were watched close; that they must hold up till the thing settled down a little; that the boys had, within a few weeks past, knocked the Co. to the tune of $20,000."

You cannot have forgotten, that Wescott, in giving this narrative on his direct examination, altogether omitted Mrs. Fitch's reply, and with what suspicious promptness he supplied the defect when it was pointed out to him on his cross examination: "Mrs. Fitch said she thought he had better let the railroad company alone, and mind his own business." You cannot have forgotten that he saw in the room the safe, which was a dark object, on one side, while he could not see the bed, which was a large white one, lying almost before him. The identical fence, through which he alleges he passed, stands before you. Neither in that panel, nor in any other is a picket that was loosened, and the whole was new and painted more than a year before that transaction is said to have occurred. If a picket had been displaced, it would have made a space of only four inches. Wescott is a young Falstaff. When pursued by dogs into Mud Creek, like his great prototype when cast in his buckbasket into the Thames, he could have exclaimed, "if the bottom had been as deep as hell I should have found it!" But even Calvin Edson, who was exhibited as a living skeleton, could not have gone through that

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fence. Amanda Fitch and Charlotte Beman proved that from July to the middle of September Mr. and Mrs. Fitch slept in an upper chamber. I waive the testimony of Miss Clark, because of the confusion into which she fell about dates. An attempt was made to show that Mr. and Mrs. Fitch occupied the lower bed room in the summer, but it totally failed. The witness Burr testifies that on the 29th of August, at about 8 o'clock in the morning, he found Mr. Fitch in bed in that room, which might have happened in consequence of temporary illness; but Mrs. Fitch, who came upon the stand to support the testimony of her daughter and Miss Beman, and who was denied leave, could not be excluded from contradicting the testimony of Burr, and so the *alibi* is sustained beyond dispute or contradiction.

Wescott made a strong point by a conversation, before adverted to in which Filley paid Williams money on account of the Gazelle, but this is disapproved by Crowell, who was present, and who testifies that the three dollars, so paid, was paid in return for so much money borrowed. Again, Wescott testifies that the defendant Fitch said "he had got Lester clear from the indictment found against him by false swearing." No such admission could have been made, because we have produced and read here the order of the court discharging Lester upon the ground of a *nolle prosequi*, on motion made by the counsel for the people. But even with all this testimony, if it had been received as true, the evidence was insufficient to establish a conspiracy. Wescott attempts to furnish such evidence with directness and effect. To that end, he says that Fitch, Filley and Corwin called themselves "the Leoni band," and when required to state how and in what manner, he says, "Fitch called himself, Filley and Corwin the Leoni band;" Filley said, "Leoni against the world;" Fitch said, he, Corwin, Filley, and Williams were banded and conspired together for the entire destruction of the road, unless they paid for cattle; and Wescott being asked what Corwin said, repeats the same thing in the same words, "I, Fitch, Freeland and Williams are banded together for the entire destruction of the road, unless they pay for cattle."

Do you not see how admirably this testimony is adapted to the exigencies of the prosecution? I imagine I hear the counsel, Van Arman say, "Wanted—proof of a conspiracy." Wescott: "They called themselves the Leoni band." Van Arman: "Wanted—evidence that Fitch belonged to the Leoni band." Wescott: "Fitch said he, Filley and Corwin were the Leoni band." Van Arman: Wanted—proof that the band was *banded* together." Wescott: "Fitch said, 'we are banded and conspired together against the railroad company.'" Van Arman: "Wanted—proof that the object of the conspiracy was the destruction of the railroad." Wescott: "Fitch said, 'we are banded and conspired together for the entire destruction of the railroad.'" Van Arman: "Wanted—evidence of a design to extort money from the company." Wescott: "Fitch said, he meant to make the company pay a hundred thousand dollars." Van Arman: "Wanted—evidence that Williams proposed to

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extort money from the company." Wescott: "Williams suggested a proposition to be made to the railroad company, through Mr. Joy, for five thousand dollars a year for five years."

What a solemn and fearful scene must that have been when these conspirators threw off the mask—"Leoni against the world!" Where and what was this Leoni? It was a hamlet among the oak-openings of Michigan. What was its magnitude? It consisted of a country tavern, a store house, a school house, a church, and a dozen humble tenements. Who were the members of this band? One country gentleman, one keeper of a tavern and ball-alley, one drinking teamster, one back-woodsman, and one village mason; and they acted their parts with as much boldness, and even more, than the clowns in the interlude in Midsummer Night's Dream. For when Bottom proposed to act the part of Lion he was overruled, lest he might roar too loudly, and so "frighten the duchess and the ladies." No such timidity distinguished the clowns of Leoni. They proclaimed themselves the unterrified—"Leoni against the world!"

This testimony is too ludicrous for grave discussion; but if you think it worthy of consideration, I submit first, that it proves too much in regard to the extent of the conspiracy. What was wanted, was a conspiracy against the Michigan Central Railroad; but we have here a conspiracy against all mankind. 2dly. It proves too little, in regard to the number of the conspirators, for at most there are but five, which is forty-five less than the whole number of defendants charged. 3dly. It is too general and too vague, for it does not at all show how this Leoni Band carried on their wicked warfare against either the world or the Michigan Central Railroad.

Adieu, Mr. William D. Wescott,

> "We know thee to the bottom; from within
> Thy shallow centre to the utmost skin."

I pass to the evidence in support of the conspiracy. Here is a letter from Abel F. Fitch to Mr. Brooks, the Superintendent of the Railroad Company:

"Michigan Centre, Oct. 29, 1849.

"Mr. J. W. Brooks—Dear Sir:—Almost every day some persons wish to take passage on the cars at this place, but the trains refuse to stop for them. Yesterday Mr. G. C. Chatfield, mother and sister, wished to take the cars for Detroit, and gave the usual signal, but no notice was taken of them. Now, if this policy comes from you or your legal advisers, as did the insulting half-pay proposition for killing cattle, if serious accidents do occur on the road, on your head, and yours alone, must rest the responsibility.

Yours, &c. Abel F. Fitch."

And here is the answer, which we have proved was given to this letter:

"Detroit, Oct. 31, 1849.

"Abel F. Fitch, Esq., Michigan Centre—Dear Sir:—You have herewith a handbill which has been quite extensively circulated upon our line, but suppose from your note that it has not met your eye.

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If any train has passed your station which, according to it should stop there. I would be quite obliged for any information that will point to a specific train, when I can correct it.

Respectfully yours, J. W. Brooks, Supt.

A perusal of these documents shows that Fitch's communication was a friendly though earnest remonstrance against proceedings of the Company, and that it was received and regarded as such. Had it been heeded all would have been well. Five hundred dollars would have paid all the damages claimed by complaining parties for the destruction of their cattle; and the payment would have prevented all danger and all tumult.

Henry Brown testifies that Fitch, Freeland and Filley said, not when together, but separately, and on different occasions, "we will let them know there is a God in Israel; that they could have no sympathy for the Company; that the way the Company acted, the dry marsh would be a good place to let them down." Brown was a poor, illiterate negro, doubtless honest, but incapable of correctly reporting a declaration or admission, as is seen in the fact that he attributes precisely the same remark to three different persons. The threats which he proves, if his testimony is reliable, were nothing more than outbreaks of popular passion, in a private conversation.

I shall waste little time upon the declarations proved by Woliver; he says that "all the defendants," (although they were never together,) "seemed to coincide in tearing up the track, and saying that they had their property killed, and if they could not revenge it one way, they would in another. They would never give up until the place was satisfied for damages; that they would carry out their objects in some shape, and that Fitch said they would hang together." This is testifying upon a new principle of swearing made easy—that is, Woliver gives us the effect of what forty different men said on different occasions, individually, under the general caption, known in the law books by the term *il semble*—it seems. Woliver was a vagabond, and, as has been already shown, a false one. The testimony convicts him of having consumed a whole barrel of whiskey in a single summer. The evidence he gives of the depredations, which were actually committed, shows that they were individual, casual, unpremeditated crimes, and disproves what he gives for the purpose of showing a confederacy among the defendants.

Joshua Wells says that "Fitch said, that they could not convict any of one the offences that had been committed; that when Filley said they could prove they were at Bear Creek, Fitch replied they could get witnesses they wanted there; that on one occasion Fitch showed how a car could be thrown off by a wedge, and how a rail could be placed so as to strike the lamp of a locomotive." It is easy to see that these are mere speculations of Fitch, arising out of the transactions of the times, produced here with some little perversion, to sustain the charge of conspiracy. A prudent man—a prudent jury—will require evidence of the whole conversation, or reject such fragments.

The counsel have dwelt upon the reply of Fitch to Spaulding, when he declared himself ready to take arms in defence of the Rail-

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road, to wit: that "he had two doule barreled guns, and he could get as many men as he wanted, and he was prepared "for the whole damned Company." The witness Burr shows that Fitch was a sportsman. His guns were kept for exercise. The remark was made in reply to an insulting threat made by Spaulding. You will take the same view of the reply which one of the witnesses says was given by Filley, and another says was given by Fitch to Stone, when extinguishing the fire of the wood pile, that they ought to be burned up with the wood, and then the Company would pay their owners half price for them—mere idle and unmeaning, passionate words. In the same category are Fitch's reply to Holden, at Gardiner's Grocery, when asked what they meant by stoning the cars," "that the Company would get worse than that if they didn't pay for the cattle killed, and that every animal had cost them a hundred dollars; a similar remark made to Wm. J. Welling, "that the cows cost the Company one hundred and fifty dollars each;" a saying of Corwin's to the witness Henry, "d——n 'em let them pay for cattle, if they don't want to be shot;" Corwin's comments upon the Railroad Dream, when upon reading "how a rich corporation killed a poor man's cow, and the poor man prosecuted and yet had to withdraw his suit," Corwin commented, 'By G——d, the people of this town won't stand such operations;'" the threat of O. D. Williams that "he had stoned the cars, and would as long as he staid in Michigan Centre;" and another proved by Henry, to wit: that Williams, when he had a cow killed said, "if they didn't pay her value, it would be a dear cow to them;" also, his declaration that the "road ought to be torn up till they paid for the cattle, and then they would go along peaceably;" so also Freeland's remark, "that a plan could be laid to blow up the Railroad, by placing powder under the rails;" and a remark imputed by Dexter to Fitch, to wit: "on one occasion, when the cars run off, he said he wished it had injured them more;" and his declaration proved by Knickerbocker, "that the Judges of courts could be brought under the influence of the Company, and there was no redress for the poor man, and that the Company was an aristocracy and a monopoly." These and other kindred expressions, abounding in the case, are intemperate, but casual utterance of individual exasperation, made in public places and on public occasions, under circumstances totally inconsistent with an idea of a connected plot, or organized conspiracy. They are evidently, dissevered, disjointed parts of popular debates of which can no more be gathered from the dismembered sentences, than they system of the theology of the Bible from cross-readings in the Concordance. Discussion of the wisdom and impartiality of Judges is not interdicted by the Constitution, and error in that respect, like error on other political subjects, may be safely tolerated, where "Reason is left free to combat it."

A word only will be bestowed upon the testimony of Wm. Dobbs, who gravely tells us that "Williams offered him five hundred dollars to burn the Mayflower and Atlantic Steamboats, and that Williams said Fitch, Filley and Champlin would be his backers." Dobbs

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was a city runner and bully, who was rusticating in the country; Williams a village mechanic, given to occasional intoxication, especially when visited by such worthies from the capital. He probably was not worth at that time five hundred cents. He may have magnified himself and his relations with Fitch, Filley and Champlin, in saying they would be his endorsers; but if such conversation ocurred at all, it was in some bar room revel, as an interlude between those interesting "fights," in which he and Dobbs knocked each other down, by way of settling the important dispute whether a gold dollar was larger than a five cent piece.

Mark English contributes, in aid of the prosecution, a statement that Fitch in September, 1849, said, "We have laid a plan to fix the road in such a shape that the Company will be unable to find an engineer to run on the road." "When I asked the reason," English adds, "he said they would not be willing to run the risk of their lives—that it would not answer for Brooks to go over the road." English was a laboring man, employed by Fitch for a short period. Ignorant of the force of the terms used, he gives, doubtlessly, the designation of "plan" to speculations in which Fitch may have indulged concerning the condition of questions then agitating the public mind; and this, probably, involuntary error is all that gives his testimony any effect.

Charles Rogers says he worked two days in harvest for Fitch in 1849; that he heard Filley speak of a piece of timber to be placed in a culvert, so as to be drawn by a rope after the hand car had passed; and he heard Fitch speak of percussion caps, and of a machine to throw the cars off in the right place, and then be removed and saved to be used at some other time; that he heard Fitch say he was willing to turn out with his team and tear up the track, but didn't say how far he would tear it up. What an unfortunate forgetfulness! Fitch must have assigned limits—at his garden wall, at the end of his orchard, or deer park, or at the high embankment, or at Dexter, or at Ann Arbor, or at the gates of Detroit, or on the banks of the river: but conscientious Charles Rogers forgets them.

In regard to these two last witnesses, it is only necessary to recall the remark before made—that testimony consisting of detached sentences, severed from long and probably frequent conversations, without explanation how those conversations arose, to what they relate, what were the points involved, and what the conclusions arrived at, is utterly valueless. It is simply incredible that Fitch should have bestowed just this amount of confidence and no more, and no less, upon a laboring man during two days in the harvest field. The testimony disproves itself by its absurdity. The machinery to be applied to draw timbers upon the road, after the passage of the hand car, is quite too clumsy; the use of powder and percussion caps, quite too artistical, while the idea of the portable engines for throwing the cars from the track savors quite too much of frugality. The counsel for the people alledge that Charles Rogers is a man of unquestionable veracity. Their standard of veracity accommodates even Wescott. Adopting that standard, I think Rogers excels Wes-

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cott in fertility of invention. A large portion of the evidence consists of threats alleged to have been made by the defendants against spies, of which I shall produce a few samples only, by way of illustration, viz: Fitch's alleged warning against spies; his supposed attempt to soothe and pacify Woliver, when he was leaving Filley; Corwin's expressions of solicitude on that occasion; Filley's alleged visit to him, after he had gone; Champlin's conversation with Sherman, warning him of the dangers of infidelity; the alleged threats of Williams, Corwin, Price, and others, against Wescott; Williams assault upon Holmes; Fitch's alleged remark, as proved by Caswell, that if Sherman had betrayed him, as he had the boys, he would like to feel his knife about his ribs; the threats against Wescott on the occasion of Gleason's visit to the Centre; and threats by Williams and others that they would kill a spy as soon as they would a dog, a bear, or a masassauger.

In regard to this class of evidence you will remember, gentlemen, in the first place, that it is by exaggerating the danger they incur in the cause of the railroad, that these "miscreants" expect to gain greater confidence and higher rewards. In the next place, all these threats and demonstrations were such as would naturally occur when such spies were employed; and there is no necessity to look for any motive, other than indignation, and the desire of safety on the part of the parties watched, whether they were innocent or guilty. Remember these spies, how they abounded like the locusts—how they waylaid suspected men by day and by night, in the open streets, or concealed by hedges, how they sat disguised at their tables, lurked under windows, under the bed, under the floor—how no one living at Michigan Centre could enter or depart from his own door without dauger of stumbling over them. You will easily imagine the apprehension, and fear and indignation which such an unlawful and self constituted police would awaken. Answer then, whether it is not wonderful that although this state of things continued in so rude a society six months, yet no life was sacrificed, no limb broken, and with the exception of the injury committed by Williams upon Holmes in a drunken revel, no violence was committed. It is immaterial, for our present purpose, whether testimony of this description be true or false; if true, it is accounted for on a principle different from that of a conspiracy; and if false, it may be dismissed at once from consideration.

I remark, however, in regard to all these alleged declarations and admissions, that the testimony bears the unequivocal impress of fraud and fabrication. A conspiracy was to be proved. That was essential in the case. What else was indicated by Wescott's remark to Taylor, that a web would be wound around Fitch, which would drag him to State's Prison? What else was meant by Phelps' remark to his wife at Laycock's house, that "if Wescott would do as he agreed, he would come a good drive over Fitch?" What could it mean but that Wescott and his associates should frame and fabricate the evidence of a conspiracy, to connect the trespasses at Leoni with the alleged arson of the depot at Detroit? The task of forg-

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ing this conspiracy was assigned to Wescott, while it devolved on Van Arman to polish it. The alleged admissions are all in the language and idiom of the witnesses who proved them. Westcott is facetious, and so Fitch, who was a grave man, is made to ridicule the clergymen of his town. Wescott is grandiloquent, and so, not only Fitch and Filley, but even Corwin and Williams utter, rant and bombast. Phelps is classical as Lucifer, and so, both Fitch (who was not a literary man) and Filley (who was a fisherman) speak in heroics. We have vowed, says Fitch, that "no cars shall pass without doing homage to Michigan Centre," and Filley says, "if you will burn the depot at Niles, Fitch will give you his wife or his oxen." When Henry Brown, the negro, reports an admission, it is in the idiom of his own degraded caste and race. He said "he didn't and couldn't have no sympathy with the R. R." When Caswell and Woliver testify to like admissions, they come out in the shape of abrupt and profane oaths; but when Mark English and Charles Rogers are reporters, the language is chaste and subdued.

Gentlemen, from the days of the Grecian oracles down to those of the Rochester Rappings, there have been those who have reported communications with departed spirits. I have always observed that the ghosts addressed, were learned in the lauguages of the conjurers. So that if those who were gathered together on the day of Pentecost, should be summoned, all of that shadowy host, whether Jews or Greeks, or Romans, or men of Crete, or of Cyrene, would respond in the vernacular tongue of him who addressed them. These alleged declarations and admissions by the defendants, betray the same accomodation to the witnesses who report them.

One remark more. These pretended admissions of plans and plots and conspiracies are manifestly false, because no such plan, plot or conspiracy has ever been developed. We are asked to believe there was a plot to burn four depots. No depot was ever burned: a conspiracy to destroy a hundred and fifty lives, no life was ever destroyed. The question of the existence of the conspiracy, then, stands thus: 1st. The evidence consists of overt acts, committed by persons unknown and without explanation; 2d, of overt acts with explanations, of the attendant circumstances, which altogether exclude the idea of conspiracy. 3d. Of alleged meetings in which nothing was agreed, and nothing conspired, and which meetings were never held. 4. Of individual expressions of resentment, passion or revenge, rebutting even a presumption of mutual understanding or concert. The pretence of a conspiracy fails, because what was done was done by those who did not conspire, and who had no knowledge of any conspiracy. What is alleged to have been contrived in conspiracy never was executed, neither by the conspirators nor by others, and never came to the knowledge of the actors in what was done. Only four defendants are proved to have committed criminal acts, and there is no evidence that they ever conspired to do those acts, much less that they ever conspired for any ulterior object or purpose. His allegation of a conspiracy, then, is foreign from the case. The proofs in support of it were admitted on grounds

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which have failed. It is a false issue. The issue is not whether felonious crimes have been committed in Jackson Co., attended by atrocious threats. Crimes have been committed, but those crimes, whether with or without such threats, belong to the jurisdiction of Jackson Co., and not to yours. An attempt to try the defendants for them is an act of usurpation. It is an usurpation which can only lead to retaliatory aggressions of the same character by the people of Jackson county. The conspiracy again is a false issue, because even if it existed, it would not prove that the defendants were guilty of the crime of burning the depot at Detroit. If the crime was committed, the defendants must be equally convicted whether there was a conspiracy or not; there lies the secret of all the difficulties that have attended this trial, and of all the delays that have occurred. You have been trying forty different men for scarcely less than forty different crimes. The issues were multifarious, the proof confused, and the subject of the guilt, or innocence of the defendants is involved in innumerable perplexities. In the history of English and American Jurisprudence, there was never such a trial by Jury. I sincerely hope there may never be another.

Gentlemen there are two classes of defendants, viz: First, those who are charged with the crime of burning the depot at Detroit only through an alleged connection with a pretended conspiracy. Second, those who, besides that connection are also directly charged with the crime by pretended admissions of complicity or knowledge. The latter closs must abide your examination of the whole case. I am ready to show you now that the first class are entitled to be acquitted. There is no evidence at all against Ira Beebe, nor against Russel Stone, nor against John W. Welch, nor against Welcome Hill, nor against William Lang, nor against John Ladue. You will acquit them of course,

Henry Showers, stand up. What, not here! The prosecution have anticipated me by excusing this defendant from further attendance. Nevertheless you must pass upon his case. Phelps says that "about the middle of March last I found Showers, Filley, Lake, Champlin and others at Michigan Centre. We talked about my journey to Niles, and about the difficulty in burning." Did Showers hear this conversation? If he heard it, yet he said nothing. The Detroit depot was burned in November 1850; the conversation was in March 1951. You will of course acquit Henry Showers.

Dr. Arba N. Moulton. He also does not appear. Jacob Woliver says "Dr. Moulton and others told me to look out for spies, for they were watching us." Wells says, "Laycock told me he borrowed from Moulton the pistol which Caswell received from Fitch." S. A. Williams says, "that at Rome Dr. Moulton told him that he understood there was a plan to blow up the Railroad." Let the Doctor pass.

Jacob Terrill. Young Dexter says that "Terrill advised him and his father to settle up and clear out, as they were suspected of being spies." You remember that Smith made a show of proof that Ter-

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rill once laid a piece of strap iron on the rail, which, however, would have done no harm. Your verdict, gentlemen, must be for Terrill.

Wm. S. Warner. Phelps says that last March, three months after the Detroit Depot was burned, Warner asked him how railroad stock was and whether it was above par. Another witness says that on being arrested Warner asked who Phelps was, and said he did not know him. Be pleased to acquit the defendant Warner.

Benjamin F. Burnett. You see him there, he went across the railroad for a midwife on the day the Goliah ran off the track, but he has shown that the services of a midwife were wanted. When his cow was killed by the engine he said he could recover her full value, but it would cost him more than it would come to. Acting on a committee to negotiate with the Railroad company, he expressed the opinion that their policy was unwise and unjust. I am sure you will discharge Burnett.

Napoleon B. Lemn. He conducted Barret's case against the railroad company. Phelps thinks that Lemn heard part of the conversation with Filley in the ball alley on Christmas. What part? there's the rub. Whatever he may have heard, he said nothing. If to hear was criminal did it relate backwards and make him responsible for the burning of a depot in November? Lemn was Corwin's lawyer also, and he said he should pity the railroad company if Corwin was to be convicted of burning the wood pile, that Corwin had friends, that the cars would be run off out of sight if Corwin was convicted; and the witnecs added that Lemn said " this was right, the people would have their revenge." If indeed Lemn said all this I grant that it was bad law, and bad morality, but it was not arson. Dixon, the wheat buyer, relates that Fitch told him that when Lemn went up to the place where the Dexter had been run off, he slipped a knife into his sleeve. This is hearsay. A verdict, gentleman, for Napoleon B. Lemn.

Hiram Hay. Why he has gone too. I am losing all my clients. Hay was at Filley's on the night of April 11th, that mysterious night. But he did nothing—he said nothing, and according to Phelps, Lake and Faulkner, he was allowed to hear nothing. When John Faulkner, "the woodman," arrived at Jackson at sunrise on the morning of the 12th, he looked around and saw a man mounted on a high white horse, and he thought the man was Hay. But certainly it was not Hay, and probably the horse itself was only a grotesque and fleecy passing cloud. A verdict then for Hiram Hay.

Grandison Filley. Phelps and some of the defendants attended a ball at the house of Grandison Filley, in March last. But Filley is charged with doing nothing, and saying nothing there. Dr. Hahn says that in the cars when the prisoners were coming down under arrest, G. Filley and another were sitting behind him, and that one of them said "If I could get hold of that damn'd Hank Phelps, I would make mince meat of him. He has been about all winter, pretending to be visiting, and now he has come out and exposed the whole matter." Which of these three persons, gentlemen, shall we

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send to the State prison for this admission? Grandison Filley must be acquitted.

Benjamin F. Gleason. This defendant called at Fitch's house twice, and Wescott says that Filley, speaking of those visits, said that "he" (Wescott) "was a damn'd spy, and he ought to have his throat cut." Woliver says that he has heard Gleason, among others, say that the persons who committed depredations on the railroad could not be convicted, for the reason that they could get witnesses enough to swear them clear. I think, gentlemen, although there may be treason, yet that there is no arson in all this, and therefore I ask the acquittal of Gleason.

John Palmer. Phelps alleges that Palmer remonstrated with Minor T. Laycock against becoming a witness and a spy, for the railroad company; but inasmuch as this testimony is contradicted by Christie Blackman, who was present on that occasion, and is harmless if true, you will at once discharge John Palmer from the indictment.

Lester Penfield. He was present at the dinner at John Palmer's. Wells says that he asked Penfield if he was not afraid, inasmuch as his sled was shod with old railroad iron? He replied "no! they never could prove anything, they had tried several times and failed." Penfield, according to Mr. John Dowdle, when speaking of tresspasses upon the railroad in Leoni, said "the people were contending for their rights." Undoubtedly they were, gentlemen, but they were contending in a wrong way. Nevertheless, I think you will restore Mr. Penfield to his mill. He is wanted there.

Abner Grant. He has neither done nor said anything worthy of bonds. Barrett has only prosecuted the railroad company for his cow that was destroyed. It was a grievous fault, but he has already grievously answered for it.

Willard Champlin. He did not write the "Price Boys Warning." Phelps relates that Champlin said at Filley's, that he would like to have seen the depot at Detroit burn, with Brooks in it. But Hart Holmes proves that Champlin was not at Filley's on that occasion.

Minor T. Laycock did not fire at an engineer, even if he received loaded pistols for that purpose. Phelps says that Fitch told him, that Laycock knew that $150 was paid for burning the depot, but did not know to whom it was paid. This is mere hearsay, and Laycock must be acquitted.

E. J., and R. Price. Phelps informed us that Price, without distinguishing which of these two defendants, admitted that he had contributed to the fund to burn the depot. We cannot ascertain which one ought to be punished, and therefore I think you are bound to acquit both.

Did the defendants hire and procure Gay to burn the Depot? The case on the part of the people is, that Geo. W. Gay burned the depot with a match which he lighted at his own house, near the Grand Circus, in the borders of the city, at 7 o'clock in the evening, carried in a box through the streets into the depot and there, in the presence of the laborers, but unobserved by them, deposited it in the cupola at eight o'clock, that it burned with a slow flame until be-

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tween the hours of two and three in the morning when it communicated fire to the building and the depot was consumed; and that the defendants now on trial furnished the match to Gay and paid him $150 for committing the monsterous crime. The burning of the depot by an incendiary is what is called the *corpus delicti.* The crime must be proved first and beyond a reasonable doubt before you are at liberty to enter upon the question whether the defendants were accessories. In regard to the crime then you will mark that no human eye saw G. W. Gay set fire to the depot. The assumption that he commited the crime rests on the conceded truth that the depot was consumed somehow; and on evidence of admissions and statements supposed to have been made by him and by the defendants. Such evidence is at once the most uncertain and unsatisfactory of all testimony. I dwell upon this because there is a common notion that admissions are conclusive while no notion is so erroneous. With respect to all verbal admissions, says Greenleaf (vol. 1, p. 200) it may be observed that they ought to be received with great caution. The evidence consisting as it does in the mere repetition of *oral* statements is subject to much imperfection or mistake, the party himself either being misinformed, or not having clearly expressed his own meaning or the witness having understood him. It frequently happens also that the witness, by unintentionally altering a few of the expressions realy used gives a completely different statement of what the party did say. The zeal too which so generally prevails to detect offenders, especially in cases of aggravated guilt, and the strong disposition in the persons engaged in pursuit of evidence to rely on slight grounds of suspicion which are exaggerated into sufficient proof, together with the character of persons necessarily called as witnesses in cases of secret and attrocious crimes, all tend to impair the value of this kind of evidence, and sometimes to lead to its rejection, when in civil actions it would have been received.

The weighty observation of Mr Justice Foster is also to be kept in mind, that this evidence is not to be refuted in the ordinary course of things, in the way by which the proof of plain facts may be obviated. (1 Greenleaf 213,) "Hasty confessions made to persons having no authority to examine, are the weakest and most suspicious of all evidence." (Foster's Discourse, 243)

These principles apply with infinitely greater force when the alleged admissions are procurred for hire and reward. I ask you now to assume a further principle, which the court must charge you to be true and no one will gainsay, which is that no admission concludes against *the fact.* An admission does not bind, if the fact is not true. Thus an admission cannot bind if the fact be impossible, because if it is impossible it is not true. The law is so tenacious of this principle, that if Gay should have declared that he burned the depot, and if all the defendants should have confessed that he did so and that they had employed him to burn it, and if it should appear in fact that the depot was not burned at all, or that althought it was burnt yet that Gay was in Buffalo or in bed at the time of the burning, the evidence of the confessions must be rejected.

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Without reviewing now the admissions alleged in this case I shall show you, in the *first* place, that they must be rejected and that the defendants must be acquitted, *because the manner in which the crime is confessed to have been committed was impossible* This is a distinct and independent defence, for it was impossible to burn the depot in the manner described, then the defendants must be acquitted nevertheless, although all other positions assumed in their behalf should fail.

I proceed to show that it was impossible. This instrument is of the same kind with that with which the depotis alleged to have been burned. It it not the same instrument, for, of course, that one is assumed to have been destroyed by the fire it kindled. But the description of that instrument is given us by the witness Phelps, as he obtained it from Gay, the supposed incendiary, and from Fitch and Filley who, it is alleged in the confessions proved by Phelps, delivered that istrument to Gay. This match is made and furnished not only on the same plan and principle, but exactly in conformity to the description given by Phelps. All question in regard to the identity of the instrument in principle and in furniture is excluded, because this match now produced was found in the possession of Gay and is presented to us as one of two which he alleged to Phelps, he received from Fitch and which Fitch confessed to Phelps he had delivered to Gayin February last, to be used in the burning of the new depot as soon as it should be constructed.

You see here a second instrument made and furnished on the same plan and principle. Phelps says, this last one, was delivered to him by Fitch and Corwin on the night of the 11th of April, to be used by him in burning the depot at Niles, and that it was actually employed two days afterwards in setting fire to that depot. The admissions of Gay that he burned the depot were admissions that he burned it *with a match of this description.* The admissions of the defendants that Gay did burn the depot and was hired by them to do so were admissions that he burned it with a *match made according to the description which they gave and the duplicate matchcs, which they delivered,* one to Gay at Detroit and the other to Phelps at Michigan Centre, which duplicate matches I now hold in my right and left hands. I call your attention now to this one, which was used by Phelps in firing the Niles depot, and is therefore called the "*Niles'* match." You see it is a cylinder of white-wood, a foot long, that has a hollow tube bored with an auger in the centre lengthwise from one end to within an inch or more of the other end. According to the descriptions, that central tube is coated with varnish, and being thus coated is filled with camphine. When that tube is filled the orifice is covered with a seal of shoemaker's wax. Remember now that the tube is coated, not with glue, but with varnish and with no other substance, and that the orifice is sealed not with any other substance than shoemaker's wax.* Here then in the same end of

* Mr. Van Dyke. The description includes glue. The Court read "the hole is glazed" &c. Mr. Seward, *Glazed is not glued.* Mr. Van Dyke. "It includes glue." Mr. Seward, "No, sir. Varnish is used as the thing with which the glazing was effected. You glaze with varnish, but never with glue. Look at this table. It is varnished, that is "glazed" with varnish."

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the instrument you see it is pierced with four small central tubes near the circumference. These extend backward to within an inch of the other end of the cylinder. In the centre of each of these is inserted an open funnel or chimney made of brown wrapping paper reaching the bottom of the tube and kept in shape by a thread twined round it. This funnel you see is smaller than the tube in which it is placed. The vacant space in the tube around the funnel is filled with cotton pressed down so as to fill the whole of that part of the tube which surrounds the funnel. This funnel with the cotton surrounding it constitutes the alleged slow train. Turning now to the other end of the instrument, you find that each of these tubes running paralell to the exterior surface and near to it is connected with a fuse or touch-hole bored into it perpendicularly from the surface. A match thus constructed and thus furnished, according to the case of the Prosecution, and no otherwise constructed or furnished, was laid horizontally in an oblong box some two or three inches longer than the instrument with the solid end of the instrument against one end of the box. In that box the vacant space of two or three inches in front of the pierced end of the instrument was filled with shavings saturated with camphine or turpentine. The case shows that Gay, at his house near the Grand Circus, at 7 o'clock set fire to one or more of the trains contained in the smaller tubes, and then carried the box, covered with a lid, nearly a mile through the streets from his house into the depot, passing some thirty or forty men employed there, proceeded up two flights of stairs and deposited it burning in the cupola, that after removing the lid he left it there at 8 o'clock, that at half-past two in the morning the burning train or trains had conveyed fire through the instrument, that then coming into contact with the saturated shavings it caused them to to burn, that the combustion melted the seal of the central orifice and the camphine thus released flowed, out and taking fire produced the conflagration of the depot. We of course were not permitted to practice experiments upon duplicate matches produced in evidence, but here are two instruments constructed by a mechanic of this city on the same plan and furnished in precisely the same way—that is to say, constructed and furnished according to the duplicates before you. The flues or chimneys are made of brown paper. The space around one of them, was filled with cotton, closely packed, so as to produce a slow train. It could not be fired at the fuse at all.

A second train was prepared with oakum, a substance named as an alternative in the description, but not found in either of the duplicates, and which we supposed to be better adapted to transmit fire. All efforts to communicate fire to that train through the flue failed. A third train was prepared with cotton, less closely packed, upon the supposition that the fire would pass through it although more rapidly than the principle of the machine required, but the fire kindled at the fuse went immediately out. A liberal construction was put upon the description and it was supposed that the train might require to be saturated with camphine, or turpentine, both of which were named in the description but for a different use. A train was therefore pre-

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pared, composed of a mixture of dry cotton saturated with camphine. After much difficulty, and after igniting the block itself at the fuse-hole, this train was set on fire, and smoke and sparks at length passed through the funnel. The instrument was then laid in a horizontal position, and after ten or fifteen minutes the train ceased to burn. The instrument was left lying, in a horizontal position, on a stove, during the night, and not a spark of fire was found in it in the morning, while the train remained unconsumed. This experiment demonstrated that a match, constructed according to this description, and to the models, produced in evidence, could not be made effective. The reason of the failure is obvious. The tubes are formed on the principle of the gun barrel, that is, of a barrel of uniform bore pierced at the bottom with a fuse hole. It would be impossible to fire a gun charged with cotton pressed down from the muzzle to the fuse of the barrel, even with the aid of an open paper tube in the centre of the cotton.

Here is a pistol with large bore. Here you see it charged with a train consisting of a paper tube surrounded by cotton, according to the description and models. I apply a match, the train will not take fire at either end. You say that the fuse hole is too small. Well, take a drill and open the fuse hole as largely as you please. You see at once that the result will be the same. Guns are made to shoot with, not to carry slow trains. But you say, that there is only one barrel in the pistol, while the machine has five. Yes, but if you cannot fire one, you cannot fire five. The draught in so close a chamber would be inadequate to sustain combustion of these materials; and if there were enough, the draught would be from the muzzle to the fuse and not from the fuse to the muzzle. The Counsel for the people have added absolute confirmation to the result thus ascertained by the testimony of Dr. Desnoyers, a skillful and I believe eminent chemist, who, testified that he had made repeated experiments with instruments thus made and charged by himself, and found it to be impossible to fire them at all.

Another experiment was made by us, which resulted in proving that, if a fire of camphine, or of cotton saturated with camphine, was kindled at the fuse, it would be immediately extinguished by *placing the lid upon the box.*

The first experiments also showed that if such a train, (made of paper and saturated with camphine) could have been ignited and kept burning, it would have emitted a smoke and an odor of cotton, paper and turpentine, that would have immediately betrayed the presence of the fire.

A further experiment showed that camphene, or turpentine, was a good solvent of varnish; that the varnish almost immediately disappeared, that within ten minutes from the time the central tube was filled with camphene the resistance of the varnish had ceased, the camphene was absorbed into the pores of the block, and the pressure of the external atmosphere (which I believe is sixteen pounds averdupoise on each square inch of surface) caused the shoemaker's wax to bend or cave inwards into the tube, whether the instrument

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was in an erect or a horizontal position. After two hours, the camphene was found to have passed through the solid block of wood at the further end, and the wax, unable io resist the atmosphereic pres sure, fell in, and the camphene was discharged.

These experiments, then, showed, first that if Gay had lighted the match at his house, it must have been extinguished by being covered in his passage through the street.

2. That if it had continued to burn, the presence of the flame would have betrayed him to all whom he passed, whether in the street or in the depot.

3. That the fire, if burning when he left it in the depot, it must have died out immediately.

4. That if the train, in opposition to the resistance of natural laws, had continued to burn seven hours, or until half past two o'clock, that the camphene in in the central tube would, five hours before that time have flowed out, and that camphene, as well as that with which the shavings were saturated, would have been absorbed thro' the box into the floor on which it was placed.

But, you will ask, may not the instruments with which you experimented, have differed from the original, alleged to have been used by Gay. We have therefore tested that question. Here is the Niles instrument, with which it is alleged that Phelps did actually set fire to the depot at Niles. You need not be reminded that this was done by Phelps under the supervision of the officers of the railroad company, for the purpose of more effectually charging the defendants. The match furniture remains within, just as when the instrument was brought into court. You see for yourselves that the trains, made in the same way, are all here, and every one of them remains unconsumed. You see here the paper tube, the thread, the cotton and the wax on the end of the instrument. You see moreover that no particle of smoke or flame ever passed through any of the trains; you yourselves sawed the block around at the intersection of the tubes and holes, and there you see that the cotton was never ignited not even that which was in contact with the fuse. Nevertheless you see, with equal distinctness, that the fuse holes have been made large, and the block itself set on fire around the fuse holes, in the fruitless attempt to produce combustion of the trains. Turn now to the testimony of Darius Clark, and you find, that he says that the fire which was communicated by this match to the building at Niles was communicated (not by the camphene, nor by shavings, nor even by the trains) but by the fire kindled at the fuse hole. That is to say, the match set fire to the depot by being first set on fire itself, like any other billet of wood. I take now this match found in the possession of Gay, and which we call the Detroit match. You will recollect, that it was produced as one of two, which, according to the testimony of Phelps and Lake, were admitted by Fitch to have been given by him to Gay in February last, to burn the new depot. There is no difference between that and the Niles match, and no difference between either of them and the matches upon which these experiments were made. Now to render the demonstration complete.

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You see that I apply this burning Lucifer match to the cotton in this tube, and that the cotton being so closely confined, actually refuses to be burned. Here are the trains in the Detroit match, all the paper tubes, and all the cotton necessarily surrounding them, just as they were when the instrument was found. Now you see me apply a lighted Lucifer match to the cotton, and it remains unburned.

If then the alleged admissions were made, the verdict must nevertheless be for the defendants, because the fact admitted was impossible. The admissions are of no more worth than would be admissions made by the same parties, under the same circumstances, and with the same solemnity, that they burned the depot at Detroit by setting it on fire with a fragment of an iceberg. Thus it has peen proved, that the match, with which the depot is alleged to have been burned, is a humbug, and that the duplicate matches, produced to give effect to the tale of the witnesses, are duplicates of the same humbug! It is immaterial whether the defendants made the admissions, for the purpose of imposing upon the credulity of the witnesses, or whether the admissions themselves were fabricated by the witnesses. The conclusion is irresistable that the defendants are not guilty under this indictment.

The answer of the prosecution to this distinct defence is given by Dr. Desnoyer. After faithfully trying to make an effective instrument, with the materials of wood, paper, twine, cotton, varnish, camphene and shoemaker's wax, according to the descriptions and to the duplicate models, he pronounces that it is impossible. Thus he corroborates and establishes the demonstration we have made. But, after arriving at this result, he was instructed to use other materials at pleasure, and at all events to produce an instrument in the same *form* which would be effective. After a fortnight of laborious experiments, the Dr. produced an instrument which was partially successful. Instead of *varnish*, for coating the central tube, he employed *glue*, which all know is soluble in water and yet not soluble in *camphene* or in *turpentine*. Having coated the central tube with glue, he made it retain the camphene for a longer period than when coated with varnish. Next, he saturated cotton with a solution of *saltpetre*, and thus, of course, produced a low quality of gun cotton, and used it in making the trains. Unprepared cotton will not convey fire through a tube—gun cotton will, and thus by the use of that material, the Dr. has made an instrument, in *form* resembling the machines exhibited here, which will convey a flame from the fusehole through the instruments. Our reply to this evidence is,

(1.) That even if the Doctor's instrument was identical with the supposed match of the defendants, still the experiment would be a failure, because the utmost length of time which he could protract the burning of the train, in the instrument, was one hour and ten minutes; whereas it is required that the match should retain the fire not less than seven hours and a half. This is skill beyond the Doctor's art. What has been done once can be done again. What

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was done by the clowns of Leoni can be done by the science of Detroit. But Dr. Desnoyer cannot do it. Counsel say, he said that he thought his new match could be perfected so as to burn several hours. I was not here when he testified, but I am instructed to deny it. *You* will decide. But whatever he may have said, the result of his experiment is a *fact*, is evidence. What he speculated beyond that, is not a fact, is not evidence.

(2.) His match is not identical with that of the defendants and differs from it in the use of the materials, *glue* and *gun cotton* or saltpetre. It differs altogether from it in principle, because glue is insoluble in camphene, while varnish is soluble therein, and because saltpetre, like powder, of which it forms an essential element, is explosive, and conveys fire by *percussion*, while cotton, whether saturated with *camphene* or not, is not explosive, and transmits fire only by contact of the particles. Saltpetre is moreover highly charged with *oxygen*, the element of combustion. The unprepared cotton, or cotton unsaturated with camphene, is less highly charged with *oxygen*. It was varnish and not glue that was demanded by the description given. It is simple *unprepared cotton* that is demanded by the description. It is varnish and unprepared cotton, alone, that are actually found in *this match*, which is claimed to have *fired the Niles depot*, and in this one, which was to have fired the new Detroit depot.

Again, the Doctor's experiment was not tried with the same conditions. The supposed match of the defendants burned when *lying horizontally*; the Doctor's match lay in an angular position with the funnel upwards. If a defendant was alleged to have admitted that he killed another, with a certain gun which he exhibited, and if that admission should be proved to be false, because the gun was not loaded, the case could not be restored by producing a whole magazine of guns, and showing that they *could* be loaded and made destructive. The answer of the prosecution, then, to this defense, is an afterthought, a new invention, a subterfuge. It is a studied, deliberate fraud. The prosecution endeavors to escape by saying, that the cotton in the Niles match might have been saturated with saltpetre; but if so, then it would have differed from the description given, which did not require saltpetre. Again, if the cotton in that match was saturated with saltpetre, the saltpetre is in it still. They give up, that there is no saltpetre in it, as they must, because it would burn now, if it contained saltpetre now. But they say that the witness Clark testified that it was laid in the river at Niles, after having fired the depot. Unfortunately, however, it is too plainly to be seen, on examiniation, 1st. That it never was fired in the trains at all. 2d. Clark's testimony, about its having been put into the river, is expressed in vague terms and probably rests on mere hearsay. 3d. The paper tubes in the Niles match are solid and firm, whereas they would have collapsed by reason of the expansion of the cotton when put in water. 4th. The whole instrument is composed of such light materials, that it would have floated away, like a bottle or a cork, if it had been thrown into the river.

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Again, it is quite certain that the match prepared for burning the new depot at Detroit, was never immersed in the river. I applied flame to it, with precisely the same result, in attempting to burn, as the other. Neither contains saltpetre—neither will burn. But still, it will be insisted that saltpetre might have been included in the description. This cannot be, because Phelps, who alone gives us a description, has been upon the stand and has not amended it. The reason was, that, in inventing the description, he had made camphene the essential ingredient. He took care to insist upon camphene as an ingredient to be used whenever he spoke of the match, thus, "that he lent Gay two dollars to buy camphene with," implying that it was to be used in charging this very match now here, which he was to use in burning the new depot at Detroit. With equal care, he makes Fitch say, when he delivered the Niles match, "You will get camphene out there, (at Niles,) because it will be inconvenient to carry." When Phelps arrived at Niles, and proceeded to set the depot on fire, he actually procured camphene at the railroad office, and charged the instrument with it, by pouring it into the trains, not into the central tube. The thought of saltpetre never occurred to him, nor to any other person, until it was suggested by Dr. Desnoyer, after the humbug had been exposed here in court. Besides, how should Ami Filley and Fitch and these illiterate men at Leoni, learn a secret in chemistry that Dr. Desnoyer has taken a fortnight to find out in his laboratory?

Gentlemen, you are now at liberty to trace out the results of this exposure. They are, that the pretended burning of the depot at Niles is a fraudulent fact; that the concealment of the fraudulent character of this fact until it is discovered here, is also fraudulent; that the pretense that the Niles match was immersed in the river all night, is a fraud; that the pretended employment of Gay to burn the new depot at Detroit, is a fraud; that the pretended confessions of the defendants, and, even of Gay, that he burned the depot at Detroit, are fraudulent; that the pretended admissions of the defendant Smith, that he was a party to that crime, are fraudulent; that the pretended admission of the deceased defendant Gunn, that he was going to burn the depot at Marshall, is fraudulent; that the pretended conspiracy of the defendants to burn these depots, is false and fraudulent. If you are surprised, as I am, that the prosecution, after the exposure of all these frauds, still endeavors to convict these defendants, by imposing upon your belief that the Detroit depot was burned with a match, furnished by the defendants, differing from that which the prosecution first proved, I can only say, that it is a new illustration of an old maxim, that "he that stands on slippery places makes nice of no vile hold to stay him up." This, gentlemen, concludes the first defense raised against this prosecution. If there were not mountains of prejudice to overcome, I should leave the case here.

But there is a second defence no less clearly established and no less conclusive. This defence is also an independent one; and stands or falls by itself. *The matches produced here by the prosecution,*

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and which I have called duplicates, were fraudulently fabricated by Phelps and Lake, the People's witnesses.

Before I prove this point, you will permit me to explain its effect upon the case, if established. If these matches were fraudulently fabricated by the witness for the prosecution, then their testimony showing that Gay and the defendants admitted the burning of the Depot by a similar match made by them and given to him, must be false, because the case stands upon those admissions. It is essential now to recall only this part of the testimony, to wit: that Phelps, Lake, Van Arman and Clark, say that on the eighth or ninth of April they saw this Detroit match in the possession of Gay, in his house in this city, and that Titus and Phelps say they found this same match now in my right hand under the sidewalk, near Gay's house two days after his arrest, and that the prosecution produced it as the match before seen in Gay's house by the other witnesses. 2. That Phelps and Lake testified that they received the match, which I hold in my left hand, from Fitch and Corwin at Filley's house in Michigan Centre, on the night of the 11th of April. These are the same which I have called the duplicates. It is *certain* that somebody made the matches. It is morally certain that they were made or procured to be made by *either Phelps and Lake, who produced them, or by the defendants.* The presumption of law, I need not tell you, is that they were manufactured by Phelps and Lake, in whose possession they were found. But Phelps and Lake say that they derived their possession from the defendants. Take notice now that no one but Phelps and Lake ever saw a match in the possession of the defendants before the 8th of April. When actual evidence of the manufacture of a thing cannot be procured, we resort of course to circumstantial testimony. Evidence of the possession of materials and instruments used in making the matches must be received. The materials of which these matches are made, are seasoned whitewood lumber in the form used by the Railroad Company for *cattle guards*, varnish, camphene, shoe makers' wax, cotton batting, brown wrapping paper and thread. These forty and more defendants were arrested unexpectingly in the night time and hurried away to prison, where they have remained ever since. The police, armed with search warrants and conveyed in unlimited numbers by steam engines, have searched the dwellings, out-houses, farms, and even bed-rooms, cellars, closets and garrets of the defendants—their chests, bureaus, drawers and every possible place of concealment, yet not a splinter of whitewood has been found in their possession, nor does that timber grow in the region where they live. Not a thread, nor a filament of cotton, nor a drop of camphene, nor a leaf of paper is to be found. The instruments employed in the manufacture were a saw, a plane and augers. No instrument of either kind has ever been found in the defendants' possession. If the defendants had made or procured these matches to be made, some merchant in town or country would have come and have told us that he sold some of the materials; some mechanic, that he furnished the instruments; some spy or

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casual listener, to prove that he saw some part of the operation, or overheard consultations about it. Not a whitewood scantling, nor plank, nor cattle guard, is found in that neighborhood. No man appears to testify that he ever saw a piece of such lumber bought, or drawn by the defendants, or delivered to them. If the matches were made by the defendants, that secret must have been in the possession of forty men, and must have come to the knowledge, directly or indirectly, of their wives, children, laboring men and strangers, sojourning within their gates. The prosecution has held and exercised a power equal to that of torture. They have not extorted, neither by threats nor rewards, a confession that any defendant ever saw or used any such materials, or instruments. The defendants have lain perishing in jatl, subject to the continual visitation and surviellance of the police, from the District Attorney downwards. No one of the defendants purchases his liberty by confessing knowledge of the manufacture of these matches.

Again, it is beyond all doubt that if the defendants made these matches, then they made them to *destroy*. They never would have delivered them to Gay and Phelps to burn Depots, unless it was certain that when applied, they would have effected their work of destruction. But these matches were made—not to burn—not to destroy—but *to humbug, deceive, and defraud*. They have deceived and defrauded; they have not destroyed, and cannot destroy.

So much in regard to the defendants: let us now turn to the other party. The idea of a match or an instrument of such a kind arose in the mind of *somebody* in the State Prison, at Jackson, at the time when Phelps and Lake were there. In form, the instrument is like the wooden model of the revolving cannon, produced there by one of the prisoners. Phelps admits that he knew of that invention. He does not admit that he saw it, but Phelps was inquisitive and impudent, and the invention was notorious. That invention never came to the knowledge of the defendants. Look, now, at this humbug—this "cunning instrument cased up"—a contrivance, not to burn houses with, but to circumvent credulous and timid Jurors, and punish obnoxious enemies. See if it does not wear an appearance of fraud—if it does not give out an odor of vulgar felony. It is State Prison, all over, and through and through.

Remember, now, that Phelps and Gay, in the first interview of their renewed acquaintance, in December, contrived a plot to effect a release of the culprit, Van Sickles, which was to be predicated *upon the burning of a Depot*. The plot was this:—that a Depot was to be burned, or, as Phelps preferred that it should be predicated upon the accidental fire which had already taken place at Detroit—that the ficticious crime was to be falsely charged upon Joe Boyce, who had dishonored his profession by stealing from thieves, and that it was to be carried out by subpœnaing a first rate man and his wife, who would swear that Boyce told them, before the depot was burned that he was going to burn it, and that after the fire he told them that he had burned it. A *token*, a *visible token*, a sign was necessary to give plausibility to this plot. Why, a token?

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On the principle that the Jews demanded of the Savior "a sign." On the principal laid down by Horace, in his instructions upon invention,

Segius irritant animos demissa per aures,
Quam qua sunt oculuis subjecta fidelibus.*

A match like that with which a depot might have been destroyed upon the theory adopted, was just the *token* wanted. The more curious, the more vulgar, the more terrible the contrivance, the better. Mark, now, that Phelps and Lake spoke of matches long before they were ever seen by themselves or by anybody else. Phelps says that Gay told him "of a match in his first interview in December, while the ashes of the Depot were yet smoking, and said he fired the Depot by placing the match in the cupola, at eight o'clock." As yet, Phelps *shows* no match. Again, Phelps says that Filley on Christmas, at the ball alley in Michigan Centre, said they "had made a match, and had sent it to a man in Detroit, with instructions to place it in the cupola, and that it was placed there and went off first rate." Phelps relates further, that Filley described the match on that occasion, with great particularity. But remember that Phelps, as yet, neither produces a match, nor claims to have *seen one.* Phelps again says, that about the sixteenth of January, when he went with Wm. B. Lacock to the ball alley, Fitch described the manner in which the match was made, and said that it was sent to a man in Detroit, and that then Fitch took him into the store-room of Filley's bar-room, and *showed him a match,* saying he would give him such an one to go to Niles. Phelps says, that, afterwards, Filley showed him the same match, at the same place, but fixes no day. Nevertheless, as yet, Phelps produces no match. Again, Phelps says, that on February the 13th, Fitch, at Detroit, told him that "he had given two matches to Gay, similar to the one with which he burned the old Depot, and that Gay, on the same day, told Phelps that he had received from the man then in town, who delivered the first match, two matches like it to burn the new Depot with. Still, Phelps shows us no matches. Remember, now, that on the 24th of February, Phelps had employed Lake to assist him in his alleged service of the Railroad Company, and that on that day, he, with Lake, visited Gay and that Gay, then, in an upper bed-room, showed him a match; but, as yet, Phelps and Lake exhibit no match to any one. Mark, now, that after Lake has been employed, and not before, Phelps by the hands of Lake, borrows from Moses Metcalf, a near neighbor augers exactly adapted to the bores or tubes of both of the matches produced in evidence. Here they are; this five-quarter auger, you see, just fits this, the large tube, and this, half inch auger, just fits the smaller one. [Mr. Seward inserted the augers in the tubes.] Phelps withdraws his wife from their home, leaving Lake sole tenant of his house. Moses Metcalf calls at Phelps' house; finds the door closed and the thumb-piece of the latch removed; knocks and Lake, partially opening the door and looking out, like a fox from his hole, receives and answers his inquiries, and closes it again. About

* What we *hear* moves us less than what we *see,*

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the same time, Heber Cowden, during the absence of Phelps and his wife, knocks at the door, the thumb-piece being again out. He is admitted, and finds a stranger, answering to the description of Lake, using augers, saws, planes, blocks of wood and a basket of shavings. Remember that all these mysterious things occurred about the last of March or in the first week in April, and that although Phelps pretends to have seen matches during three months before and to have had a description of them, yet he had never been able to exhibit a match to his employers nor to any other person.

You will next take notice that cattle guards made of such lumber, are found all along the Railroad, near to and passing immediately by Phelps' house—that he had the freedom of obtaining and of using the refuse lumber of the Railroad, for fuel or other purposes, with free access and facilities to the lumber yards of the Railroad Co., by whom he was employed, and to all its shops and manufactories. Remember, next, that Phelps left the premises, he had before occupied on the 1st of April—that on the 1st of July, on a search made in the stable on these premises, then in the possession of Alfred Metcalf, there was found concealed under the decaying hay, in the manger, a broken piece of cattle guard, which, Alfred Metcalf, the new tenant, proved had not been placed there by himself. Judging from the appearance it then presented to a dozen neighboring farmers, as they now testify, and from the appearance that it wears, when produced in court, stained and saturated with the solutions of hay and earth, in rain water, must it have lain concealed there not less than three months. You see the stain, how it has penetrated an inch, by looking at this end of the block. Next, take Mr. Stow's testimony, that on the tenth of April, aftey Phelps had left the premises, and after they had come into the possession of Alfred Metcalf, Phelps, when passing the place with Stow, left him, entered the premises and the stable, and was seen through the window, leaning over in the act of doing something with the decaying hay, which we now know was then lying in that manger.

We have thus found Lake, as early as February, in the employment and in the house of Phelps, and have found Phelps and Lake, in the month of March, in the possession of augers, planes, saws and lumber, and Lake, in the absence of Phelps and his family, engaged secretly, in the use of these instruments in Phelps' house. We have moreover, found the material for the matches, concealed on the premises they occupied in March. All these things occurred before the 8th of April; but no match had ever yet been seen by any one but Phelps and Lake. You will take notice now, that on April ninth, at Detroit, Phelps and Lake show a match to Clark and Van Arman in Gay's house, with the connivance of Gay; and on April eleventh, at midnight, Phelps shows to Clark, at Grass Lake, another match, which he says he had that night received from the defendants at Michigan Centre, and that on the 21st of April, the police with Titus at their head, having for two days made unsuccessful search of Gay's premises, are joined by Phelps, who advises a search under the sidewalk, a little remote from the house, and thereupon, in his presence

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there is brought to light a match, which is produced here as the one shown at Gay's house on the 9th to Phelps and Van Arman. Here is circumstantial evidence of stringent consistency and damning effect against Phelps and Lake, while there is an utter absence of *all* circumstantial evidence, whatever, against the defendants.

I shall be brief in disposing of the falsehoods and sophisms opposed to this circumstantial evidence. 1st. Fitch was hostile to the Railroad. Look at these two matches. Neither of them could fire a hay stack. Was Fitch a fool? No! Then he did not give such a match to an incendiary to burn a Depot with. Was he a villain? Then he would have given to incendiaries, not these matches, but instruments that would have been effectual.

2. Mrs. Phelps, (with Phelps and Lake,) says that the augers were borrowed to mend the wagon springs, and they were mended with a bed cord. But two augers, one of five-quarters and one of two-quarters, were not wanted to bore a hole sufficient to receive a bed cord. We have had *views* taken by the Jurors of all memorable places and things. Why has not that wagon been submitted to the inspection of the jury, or at least, of witnesses, that it might be seen whether it was ever mended with an auger at all? This mending of the wagon, is clearly an afterthought, a subterfuge.

3. Mrs. Phelps and Phelps and Lake say that the augers were redelivered to Moses Metcalf on the day they were borrowed. I reply that Mr. Metcalf's evidence outweighs the testimony of them all; and he says that he has no knowledge that the augers were ever returned, except from the fact that at sometime afterwards, when he had occasion to use them he found them in their place.

4. Cowden testified that before being admitted to Phelps' house by Lake, he looked through a window by the side of the door and saw Lake writing at a bureau, and being informed by Mr. Metcalf that there was no window by the side of the door, he came upon the stand and, reiterating the impression left upon his mind that there was a window, corrected the error. You have seen the house, and have seen that it has a window on the east side, as easily approached from the gate as the north front, which contains the door. The mistake was a natural one, and in regard to a matter of no importance whatever. I venture to say, that there is not one of you who can tell me how many windows there are in the side of this room, behind you, and describe their location.

5. That the only bureau in the house stood in the bedroom covered with dishes. But you know that the earthern might easily have been removed, and that Lake might have been seen writing in that room, or that, in the absence of the master and mistress of the house, the bureau might have been removed into the other apartment.

6. That the piece of whitewood timber found does not exactly correspond in age and in fibre to the matches produced. I answer. Here is a blister on the wood exactly corresponding to this blister on the Niles match. But that question has been submitted to your examination without proof. I am told by mechanics that these matches might have been taken from that identical stick, though per-

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haps not immediately adjoining the part now left. You will determine; but in doing so, remember that it is not necessary to our case that the matches should have to be made with these identical augers nor from that identical billet of wood. The possession of an instrument and of any such wood implies that the same party could procure other instruments and similar lumber.

7. That Stow could not have seen Phelps at the manger through the window. Your own experiments have satisfied you that Phelps could have been seen there before the corn in the intervening field grew up.

8. That Stow erred in stating that he saw a broken piece of cattle guard lying at Reynold's crossing, near Phelp's house, during the last summer. Answer. Timber for cattle guards was laid at several crossings in that vicinity during the summer, and there is entire confusion among the witnesses in regard to the places where it lay and the times it remained there. That is an unimportant matter.

9. That Fenn may have placed the piece of timber under the hay, and that you are justified in assuming that he did, because the defendant Burnet advised the search of Phelps' premises. Reply. Burnett's remarks were the natural suggestions of a mind conscious of innocence, and knowing the innocence of the defendants. Search of the defendants' premises had been repeatedly made, and nothing had been found to accuse them. Why not search the premises of their accusers?

Again, it is urged that the search was made too late; but it was made as soon as Phelps and Lake had made their pretended disclosures on the trial; and until that time the defendants were ignorant what they would have to answer. Burnet's remarks were openly made, on Sunday, to his friends, at the church door, when he was allowed by the Railroad Co. to go home, and they indicated a reasonable suspicion of the fraud. But how could Fenn or any other person procure such a piece of lumber, and convey it unobserved by night or by day, from any place where it could be found and deposit it in the manger? By what chemical process could it have been so effectually saturated and stained, in the short space it must have lain there, so as to have deceived and misled the intelligent farmers who agreed that it must have been subjected to the operations of the decomposition of the hay and earth for a period of three months?

Once more. It is said, that these farmers found it too early. I reply, they say that they found it without an indication of place or order of search. If it had been found later, there would have been equal suspicion of fraudulent delay.

I recapitulate. We find no matches in the possession of the defendants, no materials, no implements, nor traces of the manufacture. No one of them has ever spoken of matches. We find Phelps speaking of matches three months before any are seen. We find Lake employed by him. Lake is an engineer, and skillful in working in wood. We find him, with tools and materials, at work mysteriously. No match has ever been seen by any person where Phelps was not himself present, and did not personally produce it, or indi-

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cate where it could be found. Phelps and Lake after procuring tools and materials, and being seen at work, produced the matches proposed. Those matches serve the purposes of the plot by Phelps and Lake. They are utterly ineffectual to serve any purpose which the defendants could ever have conceived. The conclusion then is, that the matches were made by Phelps and Lake, and thus is the engineer "hoist with his own petard." We have then, established a second complete, conclusive and independent defense.

III. Here is another, a third defence established with equal certainty which is alike independant and equally conclusive, viz: *Phelps and Lake fraudulently deposited in Filley's house the* match which they pretend was delivered to them on the 11th of April, by Fitch and Corwin. You will see at once that if this position is true, then, it may be equally true and probably is true that they fraudulently deposited in Gay's house the match, found there. If their testimony is false in regard to the circumstances under which the match was found at either place, then the whole fabric of their evidence, and of this great cause, falls to the ground. I recall your attention, briefly, to the narrative given by Phelps and Lake concerning the manner in which they obtained the match at Michigan Centre, April 11th. You will remember that on the 8th and 9th of April, Phelps and Lake had exhibited the match at Gay's house to Clark and Van Arman, Lake says that it was determined then, at Detroit, on consultation with Clark to go to Michigan Centre and get a match there. On the tenth they arrived at Phelps' house. On the 11th they went early in the morning together to Grass Lake. They proceeded thence by way of Gager Cady's house. They went a short distance westward, then northward to Michigan Centre, by the straight middle road, which they struck for East fo Beeman's corners, and they pursued this road directly to Michigan Centre; that they stopped no where on the way but at Gager Cady's house; that they did not separate, that they did not go through the village of Leoni; and that they did not carry with them this match nor any box, bundle, or baggage of any kind whatever; that they had nothing in their wagon but some loose straw; that they found Filley at home, told him that they had come prepared to go to Niles that night; that Filley replied, he was glad of it, that they would be ready for them; that Phelps asked if the boys were there, and on Filley's answering they were not, Phelps replied, that he would go to Leoni and give them notice, and they might come down if they pleased; that Phelps returned on the north road to Leoni and proceeded thence to Grass Lake; that Lake being ill, after taking some refreshments, laid down, slept an hour, arose, found Filley in the bar-room, that Filley and himself fixed a pen-stock; that Filley went to the barn and brought thence this Niles match under his coat, with a box in the other hand and sent the children out of the bar-room. Lake examined the match; that he, Filley, then put the match in the box, nailed it up, deposited it in the store-room and put the key in his own pocket; that two young sportsmen came in from Jackson; that Filley sold one of them a fish; that, at sunset, Filley said he must take some persons, who were

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hanging about there, a fishiag; that Lake attended him to the pond; that he left him there, *without receiving the key from him*, returned to the house, and there found Phelps, with Myers, Corwin, Fitch, Hudson and Faulkner; and that, after free drinking and many consultations, Fitch called Corwin to fix them off, and Corwin took the key from his pocket, opened the door of the store room, took out that same box, carried it out of the house, put it into Phelps and Lake's wagon, and told him it was right side up with care, and that Phelps and Lake departed in one wagon, and Myers and Corwin returned to Leoni in another.

Gentlemen, Phelps had never seen Gager Cady nor his horse. He made no serious effort to buy a horse. He had no use for another horse. Could his visit to Gager Cady, on that occasion, so far out of the way, have had any other purpose but to mislead observes, concerning the route of his journey to Michigan Centre. It turns out, I dare not say providentially, to have been the means of disclosing their depraved designs. On that morning, James Peeler and Clarence H. Kellogg were drawnig timber up the road leading from Gager Cady's to Grass Lake. They met Phelps and Lake, knowing only Phelps. Peeler accosted Phelps, who courteously returned the salutatiou. Both Peeler and Kellogg saw an oblong bundle a foot long, six inches deep and six inches wide, tied up in a red handkerchief, lying on the bottom of the wagon. Peeler asked Kellogg what he thought was in that bundle. Kellogg replied that, if the stranger was a musician, it might be a box of musicial instruments; but he believed it contained bogus money, or a contrivance to make it with—a remark most natural, when you consider that Phelps notoriously pursued the profession of either a villain or what is called a stool-pigeon.

Israel R. Brown, sexton of the church at Grass Lake, saw Peeler and Kellogg arrive at that village between ten and eleven o'clock, with a load of timber, and he identifies the day by religious services in the church. Gager Cady was sitting in his wagon when Phelps drove up at his door. They stopped and conversed on a proposition for the purchase of a horse. Cady saw something in Phelps' wagon about a foot long, six inches wide, six inches deep, and tied up in a red handkerchief. James S. Seacord, who lives at Leoni, had been that morning sent by his employer, Dimmick, down the Napoleon road to search for a beetle and wedges, which had been left in the woods, a mile and a quarter from Leoni, on a road which Phelps and Lake deny that they traveled, and at a point a quarter of a mile south of the place where they allege they crossed that road. On coming out of the woods, Seacord saw two men pass in a one-horse wagon at a distance of three rods, between the lands of Beeman on the east and Mills on the west. There, nearly under a sassafras tree, one of the men alighted, took from the wagon a bundle of oblong shape, about a foot long, &c., and tied up in a red handkerchief, put it under his arm, got over the fence into Mills' lot and went off northwesterly across the fields. The other proceeded on his way in the wagon. Seacord walked up to the distillery and thence to Leoni,

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and there saw the same wagon, with the same iron-grey horse fastened at Cuykendall's tavern. He identifies the day by a lawsuit between Freeland and Taylor. Benjamin Dimmick corroborates Seacord, by saying he sent him on some day in the same week after town meeting to search for the beetle wedges at the place indicated.

David Beman testifies that on Friday after town meeting, that is to say, April 11th, in the morning, he was at work splitting rails in the rear of his farm out of sight of the road. He sent his son to a knoll towards the road to see whether cattle were not on the wheatfield. His son having stayed, as he thought, unreasonably long, Beman came over to the knoll, and arriving there, he saw, at a distance of some forty rods, two men, who were unknown to him, come up in a one horse wagon. They stopped near a sassafras tree. One got out, took a bundle or something else that was red out of the wagon, got over the fence, and went across Esq. Mills' field so as to approach diagonally the middle road leading to Michigan Centre, passing Penfield's sawmill. The other man drove on in the buggy across the middle road towards Leoni. He saw Jesse Cozier come down that middle road with a load of rails and pass the man in the wagon on the way towards Leoni. He identifies the day by the payment of a dollar which he owed to a neighbor and paid on that day, charging his son to remember it as he was an illiterate man and kept no accounts.

Emmet Beman, his son, explains the cause of his delay in going to the wheatfield, and says that he arrived on the hill overlooking the road and there saw two strangers come up in a one horse wagon; that one of them alighted, took a bundle in a red handkerchief, placed it under his arm, climbed over the fence into Mills' field and went westward. The other man with the wagon and the iron gray horse proceeded north towards Leoni across the middle road, and the witness saw Cozier with his load of rails, and saw the one horse wagon pass him on its way to Leoni. He, himself, soon after took a load of rails to Leoni, sold them to Toll, procured a dollar, and paid it to his father's creditor, and he identified the day as the same when he saw the court and parties in the law suit between Freeland and Taylor. Jesse Cozier swears that on the same day Phelps passed him at the point indicated on the Napoleon road and was alone, and this was north of the place where the middle road crossed the Leoni road.

Thus we have these two witnesses, Phelps and Lake, separate and apart: Phelps in the wagon going northward towards Leoni, Lake going westward through the fields on foot with a red bundle. We now follow Phelps on his winding way.

Mrs. I. D. Toll, the wife of Isaac D. Toll, lives in Leoni in the house on the south west corner made by the intersection of the north road from Grass Lake to Michigan Centre with the Napoleon road. She saw a man in a one horse wagon with an iron grey horse come up the Napoleon road. His horse took fright and ran with him as he drove in. He reined him up and fastened him at the post at Cuykendall's, facing eastward. Isaac D. Toll, the merchant, describes

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the same occurrence in the same way. A. S. Luce, a Justice of the Peace, says that Phelps' horse took fright in crossing a sewer, ran around the sign post, was reined dp and fastened looking eastward. John Cuykendall, the tavern keeper, was standing on the step when Phelps arrived, and describes the same occurrence in the same way. Luce and Toll identify the occasion as the day of the law suit before mentioned, which was tried before Luce. On that same April 11th Mrs. Toll left Leoni before dinner and went down to visit Mrs. Fitch at Michigan Centre. She arrived there about 12 o'clock and then saw the same wagon with the iron grey horse fastened to a post at Filley's tavern. About three quarters of an hour afterwards she saw the same person now identified as Phelps mount the wagon and drive off south across the railroad, which would be his route to meet Lake coming up the road passing by Penfield's mill.

You will next observe that Filley was not at home when Phelps arrived at Michigan Centre, nor when he left, nor had Lake then arrived there. The two young men, Allen and Kane, who came down from Jackson to Filley's for shooting, that day, arrived near 12 o'clock—dined in the yard while Filley dined in the house; they say that they saw Filley, spoke with him and went with him to the pond to shoot ducks, soon after one o'clock. They saw neither Phelps nor Lake at Filley's. It is manifest that Phelps arrived at Filley's after he had gone, with Kane and Allen, to the pond, and so that Phelps did not see Filley.

Let us now look for the whereabouts of Lake. Ebenezer Taylor says that he was a witness in the suit of Freeland and Taylor; that he was returning on foot from a neighbor's who lived near Penfield's mill, and on the middle road, near the mill, he passed a person corresponding in stature and age to Lake, walking westward with a red bundle which seemed to him like a small trunk tied up in a red handkerchief. He thought so because he had such a trunk himself. Whether Lake encountered Phelps and received information from him that Filley's house was clear of strangers or not, it is quite certain that Lake entered the house while Filley was absent with Kane and Allen at the pond.

Van Renselær Arnold testifies that he worked with Filley in the woods until eleven o'clock that day. Filley, at parting, said he should go home to dinner, and after dinner go to the pond and look at his nets; and told him to come down at 3 or 4 o'clock, and he should have a fish if Filley found any. Kane and Allen testify that between 3 and 4 o'clock Filley left them at the pond and returned home. Arnold says he overtook Filley a few rods from his house, with fish, near 4 o'clock P. M. That Filley went in at the south door, that is, the door of the kitchen, and he proceeded to the north door, which opened into the bar-room. While standing there, a stranger came in from the back door, which opens into the garden, and towards the ball alley, and said, "How do you do, Mr. Filley?" and Filley replied, "How do you do, Mr. Lake?" That the stranger then stooped and seemed to take up, or at least, to be raising something, and said, "I have a bundle here, I want you to take care of

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it while I go up south." Filley went into another room, came back, unlocked the door, and told Lake he might put the bundle on or in a barrel; and Lake put a red bundle into the room and himself locked the door, and threw the key upon the counter before Filley. Arnold received a fish from Filley, and went home. Arnold identifies the day by an entry, made in his day book, of the labor performed. He has been, with his book, under a subpœna, *duces tecum*, from the prosecution, and they have not called for the production of the book here. He admits that he was once in State's prison in New York, but it was thirty-eight years ago. He was pardoned by Gov. Clinton, soon after his conviction, on the discovery that his conviction was unjust. He has since led, for aught that appears to the contrary, a blameless life, and he stands unimpeached. Astute counsel perplexed his memory about the date when he made a visit afterwards to Brooklyn, but he was abundantly corroborated as to the facts of the visit, its purpose, and the occurrences connected with it. Mrs. Fitch, the widow, corroborates him conclusively by the statement that she saw him and Filley come together to the house in the afternoon; that Filley had fish, and she remarked to Mrs. Toll, who was then visting her, that it was a pity those fish did not come before, as they would have had a nice pickerel for dinner. She identifies the day as the one on which Mrs. Toll, Mrs. Dimmick, and Mr. Cross were at her house.

Kane and Allen came up from the pond at 5 o'clock and then found Filley at home. They went into the ball alley and were followed by a stranger named LAKE, whom they had not seen, neither on that day nor ever before.

Harley Woodward, who worked upon a farm of Filley, says that on April 11th, in pursuance of an appointment made by Filley, he met him, not at his house, but at his barn, about sunset, with his son and Lake, and went with them to the pond to fish. After preparing wood for lights and kindling a fire, and when about to push off, Lake said he would return, and he might perhaps want to go away before Filley should get back; and Filley said, "Here is the key that unlocks that room."

Phelps, Lake and Faulkner all agree that Corwin had the key in the evening, and unlocked the door and gave Phelps and Lake the box. It is certain that Filley and Corwin did not meet that afternoon; for Corwin came from Leoni to Michigan Centre, that night, while Filley spent the afternoon and evening at the pond, except the interval between 5 o'clock and sunset; and during that interval, he was there at his house. Lake must have therefore received the key from Filley, at the pond, and must have delivered it to Corwin when he came there at night.

You will spare me a few moments to comment upon the exceptions taken to this important testimony. Like the answers, given by the prosecution, to our exposure of the humbug of the matches, it consists of the *afterthoughts or subterfuges* of this brace of miscreants. After a fierce struggle between the counsel and the witnesses, Peeler and Kellogg, that left their testimony undisturbed, and after the coun-

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sel found that they could not shake Gager Cady from the position that he was now, as he always had been, under the impression, that he saw such a bundle as he described lying on the bottom of Phelps' wagon, they asked him whether it might not be something else as well as a box? He answered, yes. "May it not have been a great coat?" "Yes, it might;" and then, after the lapse of a month, Lake appeared upon the stand and a great coat, with pale red flannel lining, was laid before him. He then remembered that on April 11th he took that great coat with him, that he laid it upon the seat because, first, the weather was too warm to wear it; secondly, the coat was *inconveniently small;* and he supposed that the coat might have slipped from the seat into the box unnoticed; but he still resolutely denied that he separated from Phelps, or that they took a different route from that they had before described; and he stated, also, that at no time that day or night did he wear the great coat, although he was sick and was riding in an open wagon from 10 P. M. until midnight. When asked what became of the coat when he arrived at Filley's, he answered that if he took it from the wagon he hanged it up in Filley's bar-room; that, if he did not take it from the wagon, it remained therein; and so it must have been carried by Phelps to Grass Lake and back again. Yet Phelps had no other recollection about the coat, than the fact, that Lake took it with him in the morning, a fact stated for the first time on his examination at the close of the case. Gentlemen, that coat with the red lining, if it had really been Lake's great coat and worn on that occasion, would not have needed an apology for its being too small! Peeler and Kellogg would have suspected no bogus money in the plaid lining of a traveler's old great coat, in the month of April. Gager Cady could have no impression of a bundle tied up in a red handkerchief, if what he had seen was only a great coat lying on the bottom of the wagon. Badly as the great coat fulfills its office thus far, it fails altogether to explain how Phelps and Lake happened to be coming up the Napoleon road, which they swear they did not travel at all. Lake not only denies that he took the great coat from the wagon and carried it across the fields, but he denies that he left the wagon at all. Seacord was within a rod or two of the travelers, and could not have mistaken the coat for a bundle. Mr. Taylor could not have mistaken a coat with red lining for a trunk tied up in a handkerchief, when it passed within three feet of him, and was changed from side to side; and certainly Lake could have had no such care for an old coat with red plaid lining, as to have carried it across the fields on foot, when it could have been carried by Phelps in the wagon, and it was too warm to wear the coat when riding; nor could he have thought it necessary to lock it up away from the children, in Filley's store room. If he had been so careful of it, then he would have remembered at first his taking the coat with him and placing it in its depository.

2. The prosecution allege that a person standing in the places described by Beman and his son, could not have seen the arrival of Lake and Phelps under the sassafras tree; nor could they have seen Lake alighting from the wagon and climbing over the fence, and car-

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rying such a bundle across the field. So confident were the prosecution of this that they challenged us to give them a view, obliging us to do so, by declaring in the presence of the court, that no matter how many witnesses they might produce to prove these physical impossibilities, yet that the defense would swear down the hills and swear up the vallies to contradict them. The view was granted, with what result you know. I think you are satisfied, that, standing where those witnesses stood, they could not only see all that they described, but, I had almost said, that nothing else could be seen there. You remember how, on repeated trials, under that pale, clear shining sky, we recognized the bundle which looked provokingly red; and that we distinguished always the person who carried it, and his dress, gait and walk, however he attempted to baffle us.

But, gentlemen, grant that Beman and son were effectually discredited, there would still remain undisturbed the testimony of Peeler, Kellogg, Cady, Secord, Taylor, Arnold, Toll, Luce, Cozier, Cuykendall and Mrs. Toll. The testimony of either one is sufficient to overthrow utterly the evidence given by Lake and Phelps. The testimony of all these witnesses corroborates and establishes that of Beman and his son, and the mass taken together is insurmountable.

3. It was necessary for the prosecution to rebut the evidence that Phelps was seen at Leoni that morning alone. This was done by *after thought* the fourth. Lake and Phelps were recalled to the stand and testified that at some time previous to April 11th (Lake says a fortnight, Phelps says a month) they, Lake and Phelps, were passing from Michigan Centre by that middle road which led past Penfield's mill, that they arrived at Beman's corners, turned to the left and took the road to Leoni; that Lake left the wagon opposite a field, and entered it to speak to Corwin, whom Lake supposed he saw there; that Phelps passed on; that his wagon struck a hoop at the corners, the horse took fright, ran away, was reined in by Phelps and fastened at Cuykendall's tavern. This device, gentlemen, is quite too artificial. It could scarcely be supposed that Phelps' horse ran away at precisely the same hour, and at the very same place and under the same circumstances, on two different days. And is it easy to believe that Phelps and Lake are accurate, and so many other witnesses in error about the day when the occurrence took place? It is hard to believe that Lake should have left the wagon on so flimsy an excuse, for it was at 11 o'clock in the morning, and yet he mistook the person in the field for Corwin, whom he knew as well as you know me. Lake says, however, that he followed the wagon on foot, and joined Phelps at the house after the horse had been fastened. Phelps and Lake have not attended clearly to the details of our evidence, and therefore they alleged that the horse was frightened by a hoop instead of the jar produced by passing over an open sewer, and both of them describe him as being fastened, after the accident, with his head *westward* instead of *eastward!* Again, the journey was utterly without object or end. They say they went to Michigan Centre to see the defendants. They knew that Fitch was not there, but at Lansing. They say that Mrs. Filley said Filley

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was absent, but they do not say she told them where he was. Corwin, Myers, Barrett, Hay, Penfield and numerous other defendants then lived at Michigan Centre and in its vicinity. They neither looked nor inquired for them. They went out of their road half a mile to Leoni, to see the defendants who resided there. They neither found nor searched for any of them, altho' Williams boarded in Cuykendall's house where they say they stopped, and worked close by. Besides, they saw Charles Cuykendall, the son, instead of John Cuykendall, the father, who says that he was standing upon the stoop, and received Phelps on the occasion when his horse ran away. Charles Cuykendall is not brought to sustain their subterfuge. But Phelps and Lake swear that they did not on that occasion, see either Mr. Faulkner, Mr. Toll, or Mr. Luce or John Cuykendall, or Mr. Kellogg; that is to say, they allege they saw a person who was not there and deny that they saw five persons who swear they saw Phelps there on the only occasion when his horse ran away. Lake says that for aught he can remember they went home without dinner, but Phelps on urgent necessity remembers that they obtained refreshments not at Cuykendall's where dinner was on the table, but at Haddan's grocery below. Their journey was therefore without an object and without results. They kept a diary of their journies and labors in the service of the Company. They gave its contents fully on the direct examination. This journey, when, according to their account, the horse ran away, was forgotten altogether and was not put down in the diary, and it is only remembered now, because it becomes necessary to explain and rebut the testimony of the defendants. Unfortunately moreover for the credit of the invention. Phelps had denied on his previous cross-examination that his horse had ever run away with him *at all, in Leoni.* And what is still more unfortunate Wm. H. Hudson testified, before this question arose and when it could not be expected to be material, that on the night of April 11th, at Filley's tavern, Phelps told Fitch *that his horse had run away that day, and spoke of it as an occurrence that had happened that very day and never before.*

Permit me to recall now, Gentlemen, what has, we trust, thus far been demonstrated.

1. That no such conspiracy as is alleged ever existed.

2. That the question of such a conspiracy is an immaterial and false issue.

3. That the cause rests upon the evidence of admissions proved by Phelps and Lake only.

4. That this evidence of admission must be false—*first, because the pretended match was a humbug and could not have been used to fire the depot at Detroit;—secondly, because the matches were made, not by the defendants, but were fabricated by Phelps and Lake; thirdly, because the matches produced here were not received from the defendants as alleged by Phelps and Lake, but were fraudulently placed by Phelps and Lake in the depositories where it is pretended they were found.*

These points establish three conclusive defences against the pros-

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ecution. Nevertheless, to remove all doubt and to enable you to satisfy the public that the verdict of acquittal which you are to render will be right and just, I shall first proceed to show that the admissions proved *derive no support from collaterial circumstances*,—secondly that they are rendered unworthy of credit; *First* by the *depravity* of the witnesses; *Secondly* by internal evidences of *falsity in their narratives*; and *Thirdly by conflict with facts incontestibly established.*

First there is a total want of corroborating circumstances. You will necessarily inquire whether the depot at Detroit was burned by an incendiary at all. This is a circumstance indispensable to be proved. The prosecution have undertaken to prove it, and have failed. The balance of proof is that the fire was the result of casuality. All parts of the building except its outer walls were of combustible materials. It was eight hundred feet long, by one hundred feet wide, with wooden roof and floors which were pierced with innumerable hatchways, and the roof was surmounted by three cupolas with open windows, and more than a hundred hatchments or scuttles. If you say that the mineral paint upon the roof, and the mortar between the floors were a security against accidental fire, I answer that the building was actually consumed by that element. It was rendered extra hazardous by machinery, which, although it may have been properly constructed, is not proved to have been examined, or oiled, on the day before the fire. Workmen had been employed with lights that night from seven until eleven o'clock in the wheat bins, and it is proved that the wheat bins were lighted with tallow candles placed in narrow, shallow tin sconces, suspended against unsmoothed posts. It is proved, moreover, that candles had been known to be taken from the sconces and to be secured only by being placed in a bed of tallow, melted for that purpose upon the top of the bin. It is proved that combustible merchandise, such as trunks opened and bags of cotton, were deposited in the building under the cupola, and there may well have been in the great variety of commodities stored there, matter that would have taken fire by spontaneous combustion. At least there was abundant food for fire, when once ignited. That is proved by the rapidity of the flames. The building stood upon the wharf and was liable to take fire from the sparks of steamers arriving and departing by day and by night. It was exposed to fire also from within, to be communicated by engines which arrived and departed at all hours of the day and night. The cupola, hatchments and dormant windows, served to create currents of air by which burning cinders would be drawn inwards and upwards, and when extinguished, would be deposited in heaps in the cupola and below. If you say that the engines of steamboats and locomotives were furnished with spark catchers, I answer that spark catchers are not sure preventives. If perfect they at least wear out. Three several cases have appeared in proof during this trial, of buildings, wood and forests burned by passing engines, although they were provided with the same means of prevention. You have heard Mr. Smith declare that his mills in Clinton were burned by

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machinery just like what was in the depot. A fire occurred at Chicago, scarcely ten days ago, in a storehouse having a steam engine guarded just as the stationary engine here was secured, and it is supposed to have taken fire from the engine room. Ten acres of the site of this city, including the ground on which we stand, were burned over by a vagrant spark from a passing steamboat, which was provided with a spark catcher for all that we know.

In regard to the place where the fire originated, half a dozen witnesses declare, with confidence, that they arrived early at the conflagration, and that the fire broke out, not through the scuttles in the roof, but in the cupola. These witnesses are Captain Turner, Patrick Rowland, B. F. Bush, W. H. Green, and C. Savinac. But these witnesses are opposed by as many, to wit: R. Jones, Mr. Johnson, Wm. Harsha, C. W. Sims, Mr. Tuttle and John Cambell, each of whom declares that from some commanding position he discovered the fire immediately after it appeared, and that it broke out through the scuttles on the roof on the north side, half way between the eaves and the Cupola before it appeared in the Cupcla. One of the plaintiff's witnesses says, he ascended the stairs and found the fire burning the interior below, before it burst through the cupola, and that then it had reached only half way to the dome or roof of the cupola. Criticisms may be made on the testimony of each of these witnesses, but the result would be that all were equally truthful, and owing to the peculiar circumstances of the occasion all equally liable to mistake concerning the subject upon which they have testified. As it is not proved how the fire originated, so it is now and will forever remain, uncertain in what part of the building it was first discovered. But the peroscution must make out on their side that the fire originated in the cupola. What is not proved beyond a reasonable doubt in a criminal case, is not proved at all, and therefore you will assume that not only is it not proved otherwise than by the admissions that that the depot was burned by an incendiary, but that it is not proved that the fire broke out in the cupola.

But, Gentlemen, if the fire did occur in the cupola, what then? It does not aid the people's case. The fire would have originated there more likely than elsewhere, if it had arisen from burning cinders discharged by an engine or by a steamboat, or even from heated elevators; and it would have been seen there as likely as elsewhere if it had arisen from selfconsuming merchandise which was under the stairs leading to the cupola.

We have already noticed the impossibility of firing the building with such a match as is described, and the impossibility of carrying it through the streets and the bands of workmen in the depot. Gay was the last man in the city or in the State who could have performed such an act unobserved. He was equally profligate and notorious. He could not have passed in and out of the depot even in the day time, with or without such a box as is described without having excited the most intense suspicion. But the counsel for the prosecution say that Gay confessed the burning, and that he would not

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have confessed if not guilty. I reply that the testimony shows that Gay confessed he burned the depot for a reward of $150, and that he had engaged to burn the new one for $200, with the objects of screening one associate in crime and punishing another. The man who would burn a depot for $150, would also on a promise of impunity and with an inducement of $150, or even less, confess such a crime that had never been committed, and charge others with accessories to crimes of which they had never heard. But we shall consider Gay's claim to credit hereafter. Thus it results:

(1.) That it is not proved that the depot was burned by the incendiary named, and

(2.) That it is not proved that the depot was burned by an incendiary at all, nor what is equivalent, that the depot was not fired by casuality.

The prosecution seized upon an alleged change of Gay's pecuniary condition as a circumstance to corrobrate the evidence which charged him with having burned the depot. Certainly, they proved that he was very poor before the depot was burned, and they proved that after the fire he was found in possession of money and property equal in value to $150. It devolves upon us, therefore, to show that Gay at that time obtained that sum from another source. We have proved by Samuel Mead, that in the month of October, previous to the fire, he paid Gay fifty-two dollars and a half, and that he had two notes of $50 each; and we have proved by Erastus Gay and by the People's witness, Cicott, that G. W. Gay received for these two notes $96,80, making in the whole $149,30. This circumstance of Gay's improved fortunes thus disappears, and the prosecution is left without even a shadow of a circumstance to support the allegation that the depot was burned by the alleged incendiary.

It will be my duty to labor in the next place to show that the witnesses by whom the admissions thus uncorroborated are proved, are unworthy of credit by reason of their depravity. Who are those witnesses? George W. Gay, Henry Phelps and Heman Lake. I call Gay a witness, for although in name he was once a defendant, yet he was dead before this trial began; and, being dead, he was no longer a defendant. Before the corpus delicti was proved—before a plot or conspiracy between him and the defendants was proved, if any has been proved at all, his unsworn declarations made when living were received in evidence in this trial on the miserable pretense of a promise, given by the Counsel for the People, that they would afterwards bring these declarations home to the defendants. I call the attention of Courts and Lawyers, whoever and wherever they may be, to whom these proceedings shall in anywise become known, to the consideration of this extraordinary proceeding. I beg leave to remark concerning it: First, that the admissions should have been postponed until after the fulfillment of the promise. Second, that if the declarations of Gay had been brought home to the defendants and confirmed by them as promised, that then the declarations of the defendants so confirming would have constituted the evidence which ought to have been submitted, and that those confirmations

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would have rendered the admission of these hearsay declarations of Gay unnecessary and superfluous.

But the declarations are nevertheless here, and so practically Gay, the Principal, although never sworn, and although he is dead, stands before the Court a witness to prove the *corpus delicti* as well as to charge the defendants with being accessories to *his* own crime. The question now is upon his credibility.

A few preliminary explanations of *principles*, before I discuss the witnesses Phelps and Lake. Conviction of an infamous crime is, by the common law, a disqualification. No person, so convicted, can testify at all. A pardon restores competency, but leaves the credit of the witness to the discretion of the jury, under the circumstances of the case. The laws of Michigan allow a convict felon to be a witness, but refer the question of credibility to the jury in the same way. The principle of these laws is thus explained by authority: "Under the general head of exclusion, because of insensibility to the obligations of an oath may be ranked the case of *persons infamous*—that is to say, persons who, whatever may be their professed religious belief, have been guilty of those *heinous crimes* which men are not generally found to commit, unless when *so depraved as to be not found worthy of credit.* The basis of the rule seems to be that such person is morally too corrupt to testify, that he is so reckless of the distinction between truth and falsehood, and so insensible to the restraining force of an oath as to render it extremely improbable that he will speak the truth at all. Of such a person, Mr. Baron Gilbert remarked, that "*the credit of his oath is overbalanced by the stain of his iniquity.*" You see, then, that it is not bad character nor conviction of crime, that constitutes the cause of discredit, but it is the depravity of mind of which bad character or conviction is the evidence.

Who was George W. Gay? A man of fifty years or upwards, who had been convicted of more than twenty crimes, ranging from petit larceny to murder; who had been more than once a tenant of State Prisons in several States; a man who lived in daily association with culprits; and who at the time kept a house of ill-fame, and thus subsisted by the debasement of one sex, while he harbored the most depraved of the other. He eagerly accepted of Phelps' proposition to burn the new depot in Detroit, and to charge the commission of the crime upon his recreant associate Boyce, and to suborn witnesses to fasten it upon him, and thereby procure the discharge of Van Sickle; while he would at the same time secure, as he alleged, a double reward of $200 from supposed enemies of the Railroad Co., for burning the depot, and $1000 from the Railroad Company, for false information concerning the incendiary. Need I say more, to show that Gay's character was so infamous as to deprive his unsworn, *uncorroborated* testimony of all claims to credit?

Henry Phelps was convicted, and underwent nearly in its whole extent the penalty of the crime of stealing horses. He says he was unjustly convicted. That was his plea on trial; but it was proved to be false.

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Heman Lake was convicted of aiding a thief in his escape from prison, and suffered the full penalty of the law. Counsel deny that the crime of which he was thus convicted, has rendered him infamous. The distinction is a technical one, not worthy of an argument. Larceny is an infamous crime. He who assists a thief to escape from punishment, was probably himself an accomplice in the crime of the thief, at least he must be moved by sympathies as immoral and criminal as the act of larceny itself. Thus these two witnesses stand before you as men convicted of infamous crimes, men, "the credit of whose oaths, although it should be without any contradiction or impeachment, is overbalanced by the stain of their iniquity."

It is certainly a work of supererogation to prove that a person convicted of an infamous crime is esteemed in the community in which he lives unworthy of credit, for that is only to prove in an individual case the soundness of the legal maxim, "that infamous crimes indicate a mind insensible to the obligations of an oath." I think this is the first case in which the prejudiced state of the public mind has required that a witness who had been thus convicted, should be impeached by his general bad reputation in regard to truth and veracity. That proceeding has been adopted in this case in regard to Phelps. But who is Henry Phelps? He is the prosecutor on whose naked oath fifty citizens were arrested, and upon whose oath chiefly if not altogether, the indictment in this case was found. Upon his oath, sustained by his confederate, Lake, this prosecution is suspended. He was born in Bloomfield, Ontario county, N. Y., in 1814, a son of respectable parents who lived in easy circumstances. He removed with them to Wheatland, Monroe county, during his childhood. He received an education, which, although not a liberal one, surpassed what was ordinarily obtained in country schools and academies, and which qualified a vigorous and shrewd mind sufficiently for any kind of business, in any department of private or of public life. He came to Michigan with his parents, and settled in Highland, Oakland county, in 1835. He pursued no regular occupation there, but was forward and active. He conducted litigation in justices' courts, and was at that time called (according to the testimony of one of his friends) "a fine fellow." He was elected town Clerk, and commissioned as captain in the dragoons of the Militia. But nothing that he began was ever finished, nothing that he planted ever ripened. Political preferment ceased, when rumors of falsehoods and frauds gained circulation. The dragoons, who enlisted under his command, never equiped, and they were ultimately disbanded. After five years thus spent he went to Michigan Centre, where Abel F. Fitch resided, and there Phelps bought a distillery and its stock, with drafts on a person in New York, who could never be found. After six months the distillery reverted, with losses, (never yet reimbursed,) to its former owner, and Phelps immediately thereafter became a merchant at Milford, near Highland, his former residence. A month or six weeks passed away, and the stock of goods was suddenly and mysteriously surrendered to the merchants, at Buffalo,

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from whom it had been purchased, and Phelps resumed his business as an advocate in justices courts. He married about this time, and the counsel who defend him here say he has children. His affidavits were questioned, his arts in conducting trials suspected, his reputation waned, and after three or four years he was convicted of the infamous crime which has been mentioned. He was subject to occasional epileptic convulsions. He feigned them during his trial and affected sickness to avoid judgement, but without success. He feigned illness to excuse himself from labor in the prison. Suspected and closely watched there, he failed to propitiate the police until the sixth month in the fifth year of his term had elapsed, and then he was pardoned. On coming out of prison he gathered his family in his ancient home; but habits of regular industry and domestic occupation disgusted him. He invited his associate, Lake, who had just been discharged from prison, to join him, but at first without success. After the lapse of about a year he hired himself to the District Attorney of the United States, in the occupation of what is called a *stool pigeon*, that is, one who for hire joins and leads villains in crime to betrgy them to justice; or, as it was described by the counsel for the prosecution, the business of a Rogue "set to catch Rogues." While in that capacity, he renewed the acquaintance which, before his imprisonment, he had maintained with Gay, and in the very first interview opened to him the plot, if he is to be believed, to screen a culprit from punishment, by a false charge of the crime of burinng a depot, upon an unoffending person. Having drawn Gay into that scheme, he offered himself to the railroad company to be enrolled, and was accepted at a regular salary of forty dollars a month, as a member of their band of spies and informers. His engagement was to furnish sufficient evidence to bring Abel F. Fitch and his supposed associates to trial, for some felony against the railroad, out of Jackson county. He is cunning, plausible, bold and persevering. There he sits. Men imagine that they see his history written in his form and features. They say that he looks lean and malicious, and that he

> "Will look hollow as a ghost,
> "As dim and meagre as an ague's fit."

They say (superstitiously perhaps) that

> "So he'll die,
> "And rising so again.
> "His mother, when she shall meet him in the court of Heaven,
> "She shall not know him."

He is impeached by one hundred and twenty-one witnesses, all of whom say his reputation for truth and veracity is bad, many say very bad; all say it is so bad they would not give him credit on oath. He has lived in Sylvan, since he came out of prison. Sylvan, Grass Lake and Sharon are contiguous. These three towns send one hundred and eleven of the witnesses. Twenty-five omitted to state the distance of their homes from Phelps' residence. The average distance of the remaining eighty-six is two miles and a third. One of these, an honest and sensible German, persisted in declaring that his reason for discrediting Phelps was, that his heart told him not

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to believe a man who had been in state prison. All the others testified from a knowledge of Phelps' reputation, before he went to prison, or before or after this prosecution began; twenty-seven of reputation since he came from the prison, and before as well as after the prosecution commenced; eight speak of his character before he went to prison, and not atferwards; six of his character while in the state prison, and seventy-seven of his fame, all the way through from 1840 until now.

These witnesses when cross-examined by the Counsel for the People and required to describe the rumors which have ripened into this withering, blasting impeachment, say that he is charged with perjury, larceny, employing labor without paying its hire, travelling under mysterious and suspicious circumstances, swearing through the Courts causes in which he is employed as an advocate, false pretences of having recovered large sums of money from the State for unjust imprisonment, feeding his horses with his neighbor's wheat and oats, offering to lend fictitious sums of money on mortgages, pretending to imaginary contracts for grading the Railroad and building depots, false pretences about the title and quality of lands, baseless pretences about an agency of a factory that has no existence, hypocritical pretences to piety, malicious swearing against his best friends for money, a universal suspicion of dealing in counterfeit money, and associating with and harboring depraved and abandoned men. Among the witnesses are laborers, mechanics, farmers, a lawer, doctors, constables, magistrates, judges, members of the House of Representatives, Senators, and many lay members and officers of various religious societies. One of the witnesses is a brother in-law of Phelps, and a large number of the witnesses quote his father-in-law for the reputation which they assign. That father-in-law refused to appear under our supœna, and was not produced to repel the impeachment. When this singular exposure was made, the learned District Attorney remarked that it was said in the Scripture that "a man's enemy should be they of his own household." How guilty a life must that be that forfeits the enjoyment of all the natural affections! When you consider the number of these witnesses, their occupation and character, their advantages of acquaintance with the subject of their testimony and their relations to the witness, and when you consider that 86 of them are drawn from a circle of less than three miles containing his residence, in a purely rural district in the interior of the Peninsula, I think you will admit that an impeachment so effective, so conclusive, was never before presented in a court of justice.

Gentlemen, you will be on your guard against the false issues raised to weaken the force of this impeachment. Efforts were made in some instances to discredit the witnesses themselves. Allow all that was done in that way, and I think it amounts to the facts, that one of them was indicted and convicted of an assault and battery on a woman 11 years ago; an offence that I do not claim ought to be forgiven without deep penitence: that another was convicted of an assault and fined $10, within a shorter period; and that a third one

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suppressd a fact which he feared would expose him to the hatred of Phelps.

You have been told, in the second place, that many witnesses did not recollect nor give the names of those from whom they had derived the character which they assigned. Gentlemen, when a character is bad, notoriously bad, universally bad, it is the exception of favorable speech only that can be remembered. If you declare that a season was wet, you may be able to specify the days of sunshine but not the days of storm. But I think that before the impeachment closed, the prosecution found the authorities given quite sufficient. It is certain that when the whole population of the neighborhood came as one man, and united in confirming the testimony of those who had come before, that the correctness of all was established.

It was insisted that the period within which the character of the witness was to be proved, should be limited to two years succeeding Phelps' discharge from prison and anterior to the commencement of this prosecution. But, Gentlemen, you judge of the soundness of a tree by inspecting, not the bark, nor the exterior circles, but the entire trunk. If it be unsound throughout, you will find it hollow at the heart. The argument that you shall not enquire as to Phelps character before he went to prison, assumes that punishment restored the character, forfeited by conviction. But this position is manifestly unsound. Again, the Counsel insist that you shall exclude testimony of the character of the witness, arising from discussions which have occurred during this trial. But that is just the period in which his character has been a subject of discussion. It is true that you must allow for the effect of sympathy with the defendants, in considering such testimony. But these witnesses have no such sympathy. With one or two exceptions, no one of them is related to any of the defendants. They live at distances of 10 or 12 miles, and more, from them all. For the most part, they never had, nor have they now, an acqaintance with the defendants. The excitement out of which this controversy arose, never disturbed the people of Sylvan nor the people of Washtenaw county. Those who testify, are neighbors of Phelps. The influence of this excitement tended to awaken the sympathies of Phelps' neighbors in his own behalf, and to rouse them to anger against the defendants.

Again, the prosecution argue reformation of the witness, from the fact, that during the two years, since he came from State's Prison, he is not proved to have committed new crimes. But, you will remember that the form of inquiry prescribed by the court, forbade the defence to ask what was the *general* character of the witness, and limited us to enquire for his reputation for truth and veracity only. Nevertheless the recapitulation of reports as to *his general* character which transpired on the cross-examination is, I trust, sufficient to satisfy them and you on that point.

And now Gentlemen, how has this impeachment been answered? 118 persons have been sworn to sustain the general reputation of the witness for truth and veracity. Of these *one* says on cross-examination that his reputation is *mixed*, and three that they do not know

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where *Phelps lives.* *One* that his reputation is *divided.* *One* that he does not know even *one neighbor of Phelps.* One that the majority of neighbors say his character is *very bad.* One, Samuel Chadwick, says that he himself took his neighbor's watch clandestinely, carried it to Detroit, and wore it until its loss was advertised and that then he delivered it up and demanded $10, upon the false pretence that he had paid that money to reclaim it from the thief. Sixteen witnesses say that they know nothing of Phelps' reputation since 1842, and that then it was dubious; one that he does not know his reputation where he lives; one that his reputation is bad where he lives, but good elsewhere; one that he does not know Phelps; thirty say either that they do not know his neighbors or do not know his reputation among his neighbors; one that he is not competent to judge; one that some say his character is good and some bad; one who lives thirty miles from Phelps that he obtained his character by inquiries on a commission for that purpose from the Railroad, and three that they do not know his character at all. All the witnesses without exception, declare as the grounds of their testimony when favorable to Phelps' character, not that they have heard it discussed, and then pronounced good, but simply that they have never heard it discussed at all, and all of them who testify to a knowledge of his character in the neighborhood in which he lived, rely upon the fact that they have not heard his neighbors discuss it and yet they refer in that connection to the very neighbors who have already come here and have pronounced his character bad.

Of these so called sustaining witnesses, fifteen came from Sylvan, eleven from Sharon, an adjoining town; two from Manchester, distant five miles; twenty from Lima, near where Phelps resided before going to State Prison; five from Fredonia, which I believe adjoins Sylvan; sixteen from Oakland County, where he resided before going to State Prison; two from Chelsea, six miles from where Phelps resides; thirteen from Dexter, fifteen miles from his residence; eight from Ann Arbor, twenty-five miles distant from his residence. You will judge at once of the extent and accuracy of their knowledge of the subject on which they testified when I state that eighteen described the distances at which they resided from Henry Phelps, and that the average of those dietances was eleven and a half miles. The law, gentlemen, requires that the reputation, whether good or bad, which is given in evidence, shall be that which the witness sustains in the very neighborhood in which he lives, or among those persons with whom he ordinarily transacts business affairs, and that it shall be found by those only who live in that neighborhood, or who have other good opportunity to learn the character they describe. Thus, while a more successful impeachment was never made, it is quite certain that no impeachment was ever more unsuccessfully resisted. Such is the general character of Henry Phelps the prosecutor, and such his reputation for truth and veracity in the neighborhood in which he lives.

I ask you now to consider the circumstances under which he appears. He testifies under the impulse of an overpowering necessity. A stipend of $40 a month as an informer is his only resource for support. He is under arrest for conspiracy and in instituting this prose-

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cution. His fortune involves two alternatives; one that he carry the prosecution through, and cause these defendants to be sent to the State prison, and thus establish a claim to be restored to that social confidence which he so early lost; the other that he shall be convicted of wilful and malicious conspiracy against these defendants, with perjury and subornation of perjury and return, after a guilty respite of two years and six months, ta the State prison from whence he came.

"He that steeps his safety in true blood,
Shall find but bloody safety and untrue."

Phelps testifies moreover, under the impulse of a studiously concealed but malevolent and persevering revenge against Abel F. Fitch, who was originally the chief mark of this fearful prosecution. I lay aside the testimony of William Dyer on that subject, which was struck ont for want of certainty as to the person to whom the words which he had proved, referred. I cheerfully lay aside the testimony of John Hawley, which he has confessed to be false. The profession which Phelps has led has exposed him to enemies among the associates and confederates whom he has denounced and betrayed. Many such persons have attempted to obtain retaliation through this suit. Some of them imposed John Hawley (who, of course, was unknown) upon the counsel for the defence. Others who offered themselves were discovered and rejected. Hawley's confession implicated no one of the defendants. He communicated his pretended knowledge to no defendant before he testified, nor did any reason exist for disbelieving the facts he related, or doubting his truthfulness. These supposed facts were in harmony with similar facts abundantly established. He was neither supported nor justified, nor attempted to be screened after the falsehood was made known. We at once moved to strike out his testimony from the case, and resigned him cheerfully to the punishment which he deserved. The counsel for the People felt, or seemed to feel great surprise at his wickrd temerity, but let me tell them and you that in recoiling with so much horror from that silly fool, John Hawley, and in accepting the testimony of Gay, Phelps, and Lake, and in pressing conviction npon it after the exposures which have been made here, they have "strained" at a gnat while they have "swallowed" some very large camels.

I am to prove to you the malice of Phelps against Abel F. Fitch. Ulysses T. Foster testifies that in the State Prison in 1849, Phelps, (pointing to Fitch, who was passing by) said, "he is the means of my being here. I will have revenge or satisfaction." Calvin Beebee says that in April, 1849, when he announced to Phelps that a pardon had been granted to him, he replied, "I am in the prison through the influence of Abel F. Fitch and others. If I live to get out I'll make them smart for it, and give them the same feed they have given me." Wm. B. Laycock says that on the night in January last, when Phelps and his wife were sleeping in his bed, he heard her ask him whether he was going to see Fitch the next day, and whether he thought he could do as he talked of doing. Phelps replied he should go and see Fitch and if *Wescott would do as he agreed, and stick by him*, he thought he would come a good drive. The same witness further testifies that Phelps, in returning from Michigan Centre the next

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day, after having pretended a desire to purchase Fitch's oxen, said he "would have Fitch in the limbo," and when asked why, assigned the poor reason that Fitch had refused to sell him his twin cattle. Mrs. Phelps contradicts Laycock as to the first of these statements, but what is the value of her testimony? Is her stake in this prosecution less than her husband? What is her independence? I will not trespass upon the charities due to a woman and a wife, by raising a question whether she knew the dangerous ways to which he had addicted himself. She had a sick infant in her arms, and may well have forgotten a remark, the full effect of which she did not comprehend. I can excuse her for error if she commits it on the ground of her fidelity to her unfortunate husband. She is not the first woman who has said

"I ask not, I care not, if guilt's in that heart,
I know that I love thee, whatever thou at."

But if you must give full effect to the evidence of Mrs. Phelps, still it leaves the testimony of three witnesses who give proof of profound malice, and are unopposed.

Gentlemen, you will next recall the deportment of the witness Phelps during the trial. There is a living and beautiful harmony in all truth. He that is truthful to-day, was truthful yesterday, and will be truthful always. Candor, modesty, meekness and gentleness are inseparable from truthfulness. Recall the eagerness of the witness to volunteer testimony injurious to the defendants, by interpolating his answers with matter foreign to the question propounded. I give you only one instance of this. On cross-examination he was asked if he had seen Gay have counterfeit money, he replied, "yes, $50, and he said he got it of Fitch." Recall the scene when he impudently confronted Wm. Dyer, who was a respectable citizen of Indiana. and roused all the vulgar sympathies around him here in open court, falsely charging that respectable person with being a horse-thief in disguise. Recall the fact of Phelps appearing in the court-room, with his coat defaced by the pretended mark of a ball, wnich he alleged had been fired at him on Woodward avenue, in the streets of Detroit in the night time. What could he have been doing in that quarter of the town at such an hour? Do you believe that these defendants assailed him at that distance from the windows of their prison? Do you believe that sympathizing friends who followed them here attempted his assassination? If so, what has secured him against assassination since that time, now nearly three months? Recall his bar-room denunciations of Amanda Fitch for perjury, and his rude affray with J. B. Toll, her defender. Recall his charge on the stand that Mr. Frink had disguised himself to procure or instigate his assassination. Recall his impudent intrusion upon you in your journies to Mich. Centre, when you went to survey the scenes described in the testimony, and to test his own veracity. Recall his still more impudent intrusion upon the presence of one of the pannel in his visit without his associates, and without the presence of the defendant's counsel to the same places. Recall him as he has sat here among the ten distinguished and highly respectable counsellors for the People, nay, at their very head, advising, if not directing the course of the prosecution at every stage since his own examination was closed. Enough then for Henry Phelps.

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"Room for the Leper! Room."

Few words will suffice for Heman Lake. His part is subordinate. He is only a shadow of Phelps. His testimony an echo. His history therefore, need not be recited at length. On arriving at manhood, he learned something of engineering, and did nobody knows what, till his depraved proclivities bore him into the State Prison. There he was a friend and enemy of Phelps, by turns. In the summer of 1849, Lake declined Phvlps' invitation to join him, but in the winter following he accepted his proposition to work at he knew not what, for the R. R. Company, under his direction. He is a "gay Lothario," and having been introduced into Gay's house as a spy for the R. R. Company, he atones for the unkindness of betraying Gay, by taking the vacant place in the bed of his wife immediately after the husband's arrest a place which he retains with touching fidelity, when by Gay's death in prison, that wife becomes a widow. Provided with free tickets for himself and paramour, Lake openly traverses the State with her in the Railroad cars—while your wives and daughters, and all other good citizens with their wives and daughters pay full charges on the great public thoroughfare. He is well looking. and his fingers and bosom are adorned with rings and golden charms, token of manifold and meritorious favor. But he is a man of feeble mind and executes only indifferently well the plots of Phelps. In short he is an illustration of the truth that "a pretty fellow is but half a man." He testifies from a diary in which even the facts observed by himself are recorded by his master.

These are the three chief witnesses of the prosecution—*Gay, Phelps and Lake.* It is easily seen, that the plot before us is the work of Phelps alone, conceived and contrived for his own gain and to gratify his own revenge; that the agents of the R. R. Company misled and deceived, have furnished him redundant means and subordinates of his own choice. Gay wile living, if not an instrument was a dupe. Lake is manifestly an instrument in his hands.

But gentlemen, the malice of Phelps, cannot be understood without knowing the character and circumstances of him who was the object of his revenge. Abel F. Fitch was a native of Connecticut, aged when he appeared before you 43 years. He had a strong mind and considerable education. He came to Michigan in 1837, and with a fortune belonging to himself and wife, which was small in Connecticut, he was a rich man in the oak openings of Michigan. No man, not even one among all that cloud of accusers which gathered around him here, ever charged him with insincerity or falsehood. He whom you saw brought here a felon on the 19th of April, was on the 7th of that month, elected and without a dissenting ballot, as I have been told, Justice of the Peace and Supervisor of his town. He was gentle, just and humane, the friend and patron of the poor, and their graitude crowned him with u nequalled popularity. You have seen the house of Henry Phelps in Sylvan, you remember how dark and desolate it was—its low, naked walls, its windows glazed with clapboards, its scanty furniture, its doors closed and suspiciously fastened, its master and mistress abroad all over the State, looking up long lost relations, while a malefactor was pursuing his dangerous vocations—unseen. You remember the

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half thatched barn that was empty of every thing but refuse hay to conceal unlawful things in the manger. You remember the fuel gathered from the waste timber of the railroad, although the dwelling was almost in the midst of the forest. How truly all this illustrates the darkness of the spirit that inhabited there. You have seen also the dwelling of Abel F. Fitch, of Michigan Centre, shaded with trees planted with his own hands. It is neat, spacious and elegant. You remember the prairie rose clustering over its piazzas and verandahs.—Though the owner of the mansion was childless, yet its chambers ring with the merry voices of children. Books, pictures and musical instruments meet you on every side. The garden exhibits the flowers of every month from early spring till the returning frosts. Ample orchards yielding the choicest fruits; a park filled with deer, and a lake in which the wild birds forget their native home, increase the attractions of the domain. That domain extends over five hundren acres,, and when you saw it, was covered with wheat ready for the harvest, and cattle which proved not only the care but the enlightened taste and public spirit of a country gentleman. Was this the home of an incendiary, a conspirator, a felon? Were not these felicities of fortune enough to excite the malice of an enemy to the exaltation of revenge?

Of the other defendants it is enough to say that one, Smith, resides in Detroit, and was unknown to the defendants living in the country, and entirely unconnected with them. The defendant Gunn, who recently died, was equally unknown to them. The others consist of Mr. Burnett of Grass Lake, a gentleman of respectable position as a surveyor and scrivener; Mr. Lemm of Jackson, who occupies himself, I believe without reproach, in Justice's Courts, preparing himself for the profession of the Law; Dr. Farnham, a dentist of the same place; Mr. Gleason, who held a humble office in the State Prison; Mr. Warner of Jackson,who,I believe, has been a runner for hotels there,and some who are obscure farmers, mechanics and laboring men, living in the town of Leoni. Among this large number, 2 or 3 only are said to be habitually addicted to intemperance, and all the others are sober and industrious citizens. Some few of them have no moral standing, many others have lived blameless lives, and not a few hold a fair standing in the various Religious Societies, established in the central part of your state. Their only crime against Henry Phelps was, that they were the friends of Abel F. Fttch. How could they have been otherwise?

Having shown you that the evidence given you by the informers is not corroborated by external circumstances, and is rendered unworthy of credit by the character of the witnesses, and by the malice which they bear against the defendants,I proceed to show that it is rendered still more unworthy of that credit, by internal evidences of falsehood.

1. We are required to belleve, that Abel F. Fitch and the other defendants who reside in Jackson County, seventy miles from Detroit, employed a notorious and profligate keeper of a brothel in this city, to burn the depot here for a compensation of one hundred and fifty dollars,and furnished him with an instrument for that purpose,made by

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themselves. Yet, excluding the testimony, consisting of admissions, reported by these informers, there is no evidence that any one of these defendants ever saw or ever heard of George W. Gay, and even the informers do not presume to bring home to more than two of the defendants a knowledge of that person, and they give no evidence of that acquaintance, except admission easily fabricated. Phelps reports Fitch as saying to him in Detroit in February, that he had seen and conversed with Gay during his visit there, and Lake reports Mount as saying that he had known Gay from his childhood. Such an acquaintance could in either case have been proved by witnesses as a distinct fact, if it had existed. The want of such proof stamps the statements with falsehood.

Fitch was at least a man of worldly prudence. He had fortune to save, fame to maintain, and personal liberty to preserve. If he had meditated and contrived, so great a crime, would he have employed as an agent a person, whose house was not only a place of public resort, but under the constant surveillance of the City police? If he had meditated such a crime, would he have chaffered about among poor and obscure farmers and laboring men, and have demanded contributions from them, and have made payment for himself by turning out cattle for his share of the fund? The informers require us to believe that at least the following sums were provided for by subscriptions, to wit:

For the burning	the Depot in November	$150
do	do new Depot at Detroit, in April	200
do	do Depot at Niles	200
do	do Depot at Marshall	200
do	do Depot at Jackson	200
Total		$950

a sum greatly exceeding the ability of the alleged contributors. Such a sum could not have been raised by Fitch and his supposed associates, without the use of bonds, with mortgages on personal and real estate, notes with endorsements and the operation of discount, which would have left traces that would have betrayed the transaction in Leoni, and in other towns and cities, where the loan or discount should have been effected. Sir! (to Mr. Wright, a Juror) you are said to be rich. I am glad of it. You could not, to-day, pay me five hundred dollars, without the use of a check, or note, or bill that would draw in two, three or more witnesses of the transaction.

Again, we are required to believe that Abel F. Fitch, having a pair of fancy cattle that had been, or were notoriously preparing to be exhibited at the State Fair, and were even known throughout the State, authorized two incendiaries to take and drive them away immediately on returning from Niles, after having burned the Railroad Depot there; and this too when the felons were to proceed to Niles, and return from that place *openly* in the cars of the Rail Road Company, whose Depot was to be destroyed, and when every agent and servant of the Railroad was known to be acting as a spy upon his conduct by Fitch himself. The statements of Gay, which are reported, are contradictory. In December he knew the man, who employed him to burn the De-

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pot, *only by sight.* In February he still knew the man only *by sight.* In April, although notoriously he had not seen Fitch, nor any others of the defendants, yet he named not only Fitch, but also Mount and Williams, with others of his friends at Leoni, who had hired him to burn the depot in December. Who does not see that George Washington Gay would never have burned a Depot or made a contract, without knowing his employer? Who does not see that Abel F. Fitch, could no more have remained unknown in making such a contract, than you and I? Again, Gay when appealed to by Phelps in April, to tell Van Arman who it was that had in fact burned the depot, replied "Do you think I am such a d——d fool as to put myself in the power of any man?" Nevertheless, Mr. Van Arman, who testified to this in May, reappears in Court in June, and remembers the fact that Gay not only mentioned in April, that he burned the Depot, but referred to Mount and Fitch as his employers.

Again, Gentlemen, if Gay was employed by Fitch to burn the Depot in November, and received the match from him before the fire, and the money, one hundred and fifty dollars, immediately afterwards, these transactions must have occurred *somewhere.* There must have been a meeting between him and Fitch at some time, and in some place, either in Detroit, in Jackson County, or somewhere else. Such a meeting could have been proved, if it had ever taken place. When Gay and Fitch gave Phelps their unreserved confidence and stated these transactions freely, why did not one or both of them state where and when that meeting occurred? Fitch was widely known, and if we are to believe the evidence, was vehemently suspected. Gay was equally notorious and infamous. The absence of Fitch from home, to attend such a meeting, if not his presence in Detroit, could have been proved. There must have been travel by either Fitch and Gay, or by one of them, on the Rail Road. Spies were all summer long waylaying every step of Fitch. The police were always on the heels of Gay. Or there must have been travel by one or both of them on foot, or in some carriage upon a common road. Such a mode of travel would have increased the time spent,and would have in itself been suspicious, and, of course, would thus have directly increased the chances of exposure. So it appears, that Fitch never came to Detroit; nor was Gay at Michigan Centre; nor did one ever leave his home, to meet the other elsewhere. Was the negotiation conducted by correspondence? Then it must have been by Post, or by Private messengers. The Post keeps records of letters, although not of their contents.—Messengers could not pass unobserved. The homes of Fitch and Gay have rendered up all their secrets to the police, three times over. No such correspondence has been found. We are moreover warned against crediting the narrative, in the very outset of the case. Phelps says, that in his first interview with Gay, he applied to him to know how he could clear Van Sickle; and Gay replied,we can do it by a *plot,* and predicate it on *the burning of a depot.* Phelps himself suggested that, instead of burning a depot in fact, the plot should be predicated upon the conflagration which had *already happened.* That suggestion proceeded on the ground, that, although the conflagration had happened by casuality, yet it could be proved by subordination, and that

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it had been done by an incendiary, and the suborned witnesses were to prove that fact by fabricated admissions. What are all the pretended admissions of Gay and Fitch now produced here, but the fabrications, thus early foreshadowed?

Nevertheless, Gentlemen, Gay's declarations are not evidence. He is not a defendant. He is not on trial. If living, he would be a competent witness to prove the facts if he could be a witness at all. But he could not be a witness if living, because being the principal, he would not be competent before conviction to a charge the crime against accessories. Since he is dead, his declarations while living can no more be received than could his oath while living. If you proceed upon the ground of a conspiracy, his recitals of what was past and ended are not competent testimony; "It is only declarations, promises and threats, constituting a part of the felonious transactions themselves and uttered in furtherance of them, that can be received as evidence.—(Roscœ, 323.) I challenge the Counsel for the prosecution to show now where in all this voluminous mass of testimony is found one word of proof that any one of the allegations of Gay was ever brought to the knowledge of any one of the defendants and confirmed by him, or was ever brought to his knowledge at all. Take the names of the defendants. Have those allegations been brought home to Benjamin P. F. Gleason? No! To Daniel Myers? No! To John Palmer? No! To Lester Penfield? No! To Farnham or to Barrett? No! To Grant or to Lacock? No! To Willard Champlin? No! To Erastus Champlin? No! To E. Price? No! To Abel F. Fitch? No! To Aaron Mount? No! To William Champlin? No! To Richard Price? No! To Ami Filley? No! To Andrew J. Freeland? No! To William Gunn, or any other defendant? No! The testimony of Gay's allegations came in then unadvisedly. It has done its work. It has poisoned the public mind against the defendants. You are more than human if you have not been affected by it. But it is time to discharge this testimony from the case. I suppose the promise on which it was admitted was made in good faith. To retain the evidence since that promise has been broken, would be a fraud. I demand of the Court that the testimony be struck out from the record, and conjure you that it be disregarded altogether.

I pass to the supposed admissions of the defendant Smith as reported by Phelps and Lake. These, like those imputed to Gay, are discredited by internal evidence of falsehood. Phelps says "Erastus Smith was present when Gay said he received $150 for burning the depot, and that he knew the man by sight who paid it; that it was raised by a company of men; and Smith afterwards intimated that he received a part of the money." Again, Smith said "that the depot was burned under an *arrangement* with Gay," of which he was *cognisant*, and also that Gay told him who paid him the $150." Not only is there no evidence that Fitch ever saw or heard of such a person as Smith, but the admissions themselves shows that he who procured them knew that there was no acquaintance between them. These admissions, moreover, have all the vagueness and generality of a technical pleading. An "*arrangement*" "*cognisance*"—such are the words not of a man giving an account of a past transaction from actual

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knowledge, but of a lawyer framing general interrogatories, or preparing evasive and deceptive answers. Again, Phelps reports Smith as saying in February at the Pantheon, that Fitch had left matters for disposing of certain witnesses (Lacock and Wells,) with him, and had agreed with Gay to burn the new depot. That he, Smith, had agreed to assist Gay, that Gay had given him part of the money," that Smith had told him that "Fitch had applied to him to burn the new depot;" Phelps and Lake both testify that "Smith was at the Pantheon in February; talked with Phelps about burning the depot at Niles, and wanted to know if the trial of Corwin and Price for burning the wood was to be put over beyond the March term because that would give them more time.

I separate these alleged confessions of Smith from other evidence of the same class, and leaving Smith's Counsel to answer for him so far as they relate to himself: I remark upon them only in relation to the defendants. If Phelps enjoyed the unlimited confidence of Fitch during his visit here in February, and if Fitch had one or more interviews with Smith, then why could not those interviews be proved. Fitch was at Johnson's hotel, and Smith at the Pantheon near by. No private interviews could be held in places so public. Phelps having the confidence of both, and desiring to circumvent both, could have bro't them together without being suspected by either.

Again, Gentlemen, the allegations of Smith, like those of Gay, are to be rejected because they are of the past, and not a part of the transactions which they described.

The learned District Attorney, however, has relieved me from the necessity of discussing further the alleged confessions of Smith. That gentleman advises and solicits you to acquit Smith. The evidence against Smith consists of the admissions which I have cited, and those admissions are proved by the same Phelps and Lake who prove admissions against the other defendants; nay, Smith's admissions are a part of the evidence against the other defendants. On what ground, then, does the District Attorney advise the acquittal of Smith? Certainly, not on the ground that Smith's admitted agency in the crime of burning the depot was trivial or harmless. On the contrary, he was in the city and admits that he aided and abetted Gay in the very act. He alone, then, of all the defendants, ought to be convicted under the first count in the indictment as a principal in the crime; nor does the District Attorney ask the acquittal of Mr. Smith on the ground that the evidence given against him by Phelps and Lake is false.

On the contrary, if the evidence of those witnesses against Smith is false, then their evidence against the other defendants is false. But the District Attorney declares that he advises the acquittal of Smith on the ground that Smith's admissions as proved by Phelps and Lake are false. The District Attorney pleads for him, that under the seduction of Phelps he confessed participation in a crime of which he had no knowledge. Were then his allegations against Fitch true, whilst his admissions against himself were false? No; the whole, of course, were false. When I heard the District Attorney submit this extraordinary proposition, I thanked God and took courage. It revealed the secret of this entire prosecution. It show-

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ed that Smith had been fraudulently made a defendant that he might utter, without oath, false allegations to convict the defendants at Michigan Centre, under an assurance that he should be acquitted himself. And now, Gentlemen, since Smith's allegations are admitted to be false, are Gay's averments made under the same circumstances true? Smith was, indeed, degraded and debased. If Smith was seduced so easily by Phelps, Gay had even less virtue to resist his seduction. I declare, gentlemen, my profound conviction that the whole prosecution was conceived in fraud; that George W. Gay never burned the depot; that he and Smith falsely accused themselves of that crime under a promise of Phelps to share in the reward of a conviction of the defendants in Leoni; and that Gay, if he had lived to go through a trial and conviction, would have been recommended for a pardon, and would have shared that reward. No, no, Mr. District Attorney! No, no, most learned Counsel of Ten, that game cannot be played out. I do not say, nor believe, that the defendant Smith is guilty under his indictment, but I do say that if any are guilty he is the guiltiest of all. If any one here shall be convicted, he must be convicted first and surest of all. More than this I say that—if there is honesty in Michigan, he will be the last of all the offenders to be pardoned.

Phelps and Lake, either jointly or severally, charge the following defendants with admissions of some agency in procuring Gay to burn the depot, viz.: Abel F. Fitch, Ami Filley, Wm. Corwin, Daniel Myres, Ebenezer Farnham, Minor T. Lacock, Wm. Champlin, Eben J. Price, Aaron Mount, Andrew J. Freeland, O. D. Williams, and John Ackerson. Only two are alleged to have admitted any personal acquaintance with Gay. All were seventy miles from Detroit when the depot was burned, and could have had no actual knowledge of the manner in which it was burned. Even if they had contributed to hire Gay to commit that crime there must have been some doubt in their minds whether the fire was not a casual one. Nevertheless, they are all charged with admissions made with as much certainty and confidence as if they had been eye-witnesses and had actually participated in the transaction.

But, gentlemen, what motive had Abel F. Fitch to engage in such a crime? It is to the credit of his generous nature that all of these foul and infamous accusers suggest a motive, not of avarice, nor of revenge, nor even of retaliation, but of sympathy. Thus Phelps states that "Fitch said, at his barn, in January last, that I was well aware as he that the railroad was a curse to the community, that a number had leagued together to right the wrongs of the people; and that he wished to carry the plan further; and would continue until they brought the company to terms." Sympathy, then, with neighbors, who had lost a few cattle, was the motive of a man worth ten thousand dollars and more, for a proposition to burn the depot at a cost of one thousand dollars, at the hazard of his own safety and fortune, and the safety and fortunes of the neighbors whose cause he had espoused. Sympathy with a few obscure men a motive for illuminating the State with a baleful conflagration of all the most useful structures upon its greatest highway!

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And, what was the inducement of Ami Filley? If all the testimony in the case be not false, he was indeed hostile to the railroad company, and was a mischievous man. But he was a man of feeble mind and purile conduct, a mere procurer for other men's pleasures. He kept his boat on the lake, and his nets in his fields to supply your tables with fishes and birds. He kept balls in his nine-pin alleys, and liquors in his bar, for the recreation and refreshment of visitors. He was never in Detroit nor in Niles, so far as we know, and his enterprise in mischief reachad no farther nor higher than committing annoyances in his own neighborhood. When or where did he ever learn that such a wretch as Gay existed in this capital or elsewhere? As soon would you see a constable leading a revolution, as this bird catcher, of Leoni, organizing such a conspiracy as this. Corwin's migrations were from Cuykendall's tavern, in Leoni, to Morrison's grocery, in Jackson—a distance of about eight miles. When, where, or how came he to a knowledge of the haunts of crime in this metropolis? Daniel Myers. Stand up. There, gentlemen, you see a humble tailor, who follows his shears in an annual orbit of two miles in diameter, encircling the village of Leoni—as ignorant of Detroit, its corruptions, and its crimes, as you are of the painful frugality by which he lives. Beyond him you see Ebenezer Farnham, a country dentist, an early settler in the Genesee country, who has brought the early settler's habits of occasional intemperance into Michigan. He is crazed when in his cups, and his drunken vagaries are brought here by informers, who seduced him into intoxication. Harmless when in that condition, he is gentle and benevolent when in the possession of his senses.

There, gentlemen, is Minor T. Laycock, a country lad of scarce 21, whose simple, good nature leads him into the sympathies and griefs of his neighbors, and whose principles of fidelity and truthfulness, quite too rare even among us, restrain him from saving himself by becoming a mercenary accuser. Eben J. Price and, if you will, Richard, his brother, are two boys led by occasional intemperance to join in the disorders of a country bar-room. Andrew J. Freeland is an industrious, hard working farmer, loquacious and perhaps zealous, in the controversies around him, but harmless in action as he is free in speech. Orlando D. Williams is a stone mason, civil and quiet, of good behavior when sober, but, like Farnham, falls sometimes into intoxication, and then a braggart and a fool, whose very extravagance assures that he is harmless. John Ackerson and Aaron Mount are two very poor farmers, neither of whom has committed an act or spoken a word in the midst of all the excitement by which they have been surrounded. But they were witnesses against Phelps, on his trial for horse stealing, and so they must be made to "feed on the fare" which they presented to him.

Behold here, then, the conspirators who it is alleged "made up a purse and furnished a machine to the keeper of a city brothel, to burn the depot in the commercial capital, at the hazard of the conflagration of the whole city." Among them all, are only two of whom it is pretended that they had ever suffered an injury from the

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railroad company." Accept the testimony of Phelps and Lake, and you have evidence, not that both of them said that they had seen George W. Gay, but that they confessed they had(!). Reject their testimony and no one of these defendants is proved to have ever heard of Gay, nor even to have seen the city in which he is supposed to have kindled that baleful conflagration. Only one of them was ever convicted of a crime. Gentlemen, if you would secure your dwellings, your store houses, and your public edifices, if you would live in safety and in peace, extirpate the crime that arises within your own walls. Raze to the ground the haunts in which it is born, and schooled and trained, at least watch them well and closely. My word for it, your town and every dwelling and every edifice in it, will stand and endure forever, if they wait till the torch is applied to them by the farmers, mechanics or even by the felons of the rural population, by whom you are surrounded, supported and maintained.

Mark now, gentlemen, the candor of the accusers and the simplicity of these alleged conspirators. Phelps, speaking of his pretended interview with Fitch at his barn says: "I think (yes I *think* are the words) there was allusion made to the burning of the depot at Detroit. He said it had been burnt and could be again." How frank and generous was it in Fitch to repose such confidence in a man whom he had caused, five years before, to be consigned to the State Prison! How probable it is, too, that a country gentleman, having five railroad depots to burn, would organize a joint stock company of forty share-holders with a capital of $950, to execute the enterprise! How very probable that such a person would appoint a meeting of the incendiary with the stockholders, on the occasion of a public shooting match at a ball alley on Christmas! How natural it was in that same country gentleman to show his machine for burning the depots to the incendiary, who had not yet accepted his proposition, and was cheapening the twin oxen which were to be received by him in payment. When that same country gentleman met the incendiary, by appointment, in Detroit, to consult upon the enterprise of burning the new depot in that city, how admirably he selected the place for consultation—the trunk table in the car house, among the newly arrived passengers, the conductors and baggage men, laborers and spies of the corporation whose depot was to be destroyed. How kind it was on the part of Fitch instead of sending Phelps to Gay's house on a rainy day in February, to consult about the crime, to appoint the interview between them, just around the corner at Savinac's saloon, on the most public wharf in the city. It never occurred to Fitch that although he might hire five depots to be burned for a thousand dollars, that he would thereby pledge this whole estate and all future acquisitions in security against betrayal by his accomplices. But it is replied that Fitch supposed he had control of the police authorities of Jackson county, and a sure reliance on the affections of its whole people. What security could all these afford against indictments which must be presented, not in Jackson county alone, but in Wayne, Calhoun, and Berrien coun-

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ties. The learned counsel reply that Fitch was prepared to make away with the witnesses against him. Is there any man so simple as not to know that assassination of many witnesses is not the surest way of securing the verdict of a jury? But Phelps replies that Fitch promised him to procure a change of venue. Ah! there I detect the lawyer in his fraud. Phelps was familiar with those terms; Fitch ignorant of courts, probably never heard of a change of venue in all his life. Again, how nicely the tone and spirit of Fitch's reported conversations are in keeping with his known character and disposition. "We are preparing to give Detroit another touch. They are building another depot and I design to burn it as soon as it is up; I don't care a damn who it kills if it be the Governor of the State." "It will give the State a luminous appearance to light it up at both ends." "If detected you had better dig your graves before you go."

Consider now how happily Fitch chose the place for the final departure of the incendiaries to Niles! Not his own barn, not one of the many private chambers in his own house; but the open, public bar-room in a tavern! Consider, too, the occasion and the circumstances; a drunken revel in the presence of two well known neighbors not accomplices, and a traveler who, like himself, refrained from the cup and read the newspapers. Mark, too, the caution and economy manifested in the direction for the use of the match—"you will have to get camphene out there." Yes, to get the camphene to burn the depot at Niles, in the town of Niles!

I ask you next, Gentlemen, to examine the alleged admissions in detail. They are all coin of the same die, whether related by Phelps or Lake.

Phelps—"Fitch said it cost him a cow and $25 to burn the old depot."

Lake—"Fitch said he had paid $50 to a man to burn the new depot, and was to pay $50 more when it was burned."

Phelps—"Corwin told me his contribution towards burning the old depot was $12.

Lake—"Filley said he had paid $30 of the $150 for burning the old depot."

Phelps—"Erastus Champlin said a purse had been raised to pay for the burning of the depot last fall."

Lake—"Fitch said Lacock knew that a purse of $150 had been raised for burning the depot last fall, but did not know to whom it was paid."

Phelps—"Fitch said if I succeeded in burning the depot at Niles, I might take the oxen and the balance of the money when I came back."

Lake—"O. D. Williams said his share of the fund was $17, and afterwards said it was $20."

Phelps—"Freeland said he had paid $14 to Fitch, his share for burning the depot last fall."

Lake—"Aaron Mount said he had known Gay from a child; we raised a purse and sent it down to him to burn the depot at Detroit, and he burned it so quick we hardly knew it."

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Lake—"Freeland said he had paid his share to Fitch towards burning the depot, and Fitch had paid it over to a mann in Detroit."

Phelps—"E. Champlin said a purse had been raised to burn the depot at Detroit again."

Lake—"Williams said at Leoni that the best thing they did was the burning of the depot at Detroit; but they got no credit for it."

Phelps—"Myers said on the way to Michigan Centre that the burning of the depot at Detroit was done so nicely that they did not suspect any thing, and therefore we got no credit for it."

Lake—"Farnham said it was done so slick that they got no credit for it, and were never suspected."

Phelps—"Fitch said the Railroad Company was not able to discover the cause of the fire; they were not smart enough; and if they would pay enough, he would show them before their eyes how to do it."

Phelps—"Willard Champlin said he would like to have been where he could have seen the depot burn, and seen Brooks in it."

Phelps—"Dr. Farnham said we got an old fellow to burn the depot at Detroit, last fall, but it did not seem to make much impression."

Lake—"Corwin said, we burned the depot at Detroit very slick, and that was the only one they had paid for burning."

Phelps—"Fitch said a witness might go before the Grand Jury, but he would not live to go before the Petit Jury. Corwin said a witness might go before the Grand Jury, but he would not live to go before a Petit Jury. Filley said ditto to Mr. Corwin, Price said ditto to Mr. Filley."

Phelps—"Smith (in speaking of the old depot) said Gay received $150, and intimated that he received a part of the money in advance."

Phelps—"Smith (in speaking of the new depot) said, at the Palo Alto saloon, that $150 had been paid to Gay, and that he received part in advance." "Wiliiams told me if he was detected he would kill the witnesses or swear them to hell." "I have heard Corwin, Filley, the Prices and Fitch threaten Lake to kill him or swear him to hell." Phelps says, "I received sixty dollars in advance for burning the depot at Niles, but don't remember from whom I received it." "O. D. Williams told me that a man at Detroit burned the depot, and that he was paid sixty dollars in advance." "Corwin, at Bascom's, said, that if they could burn the depots, both at Detroit and Niles, at the same time, the Railway Company would *pay up.*" "Wm. Gunn, said at Marshall, that if the Detroit depot should be burned up again, and Phelps should burn the Niles depot, and he, (Gunn,) should burn the Marshall depot, he thought the Company would begin to *pay up.*" "Fitch said if we could get a fire into the depots at Niles and Detroit at the same time, they would begin to think Miller's doctrine true." "Dr. Farnham said if we could blow up the track a few times, the Company would be willing to *buy us off and pay any sum asked.*" "O. D. Williams said he should write to the Company and tell them if they would *give a thousand dollars a year for five years* they should have no more trouble."

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Lake—"Corwin said they meant to propose to the Company to *pay one thousand dollars a year for five years.*"

Phelps—"Myers said if I was successful in burning the depot at Niles, we would be able to draw a *large sum of money from the Company.*"

Lake—"Dr. Farnham said if they could make a clean sweep of the depot at Detroit, he guessed they would wake up." "Fitch said they would make a clean sweep at Detroit and Niles." "Corwin said they would make a clean sweep at Detroit and Niles." Williams said they would make a clean sweep at Detroit and Niles." Mount said—(*the same.*) Filley said—*(the same.).*

Enough of this. There is an identity in the admissions as harmonious as in the ritual of a Free Mason's Lodge, or in the Liturgy of the Episcopal Church.

Gentlemen, Dramatists, and Novelists, in the early period of our modern literature, relieved the wearisomeness of their pictures, by interludes and subordinate tales, which had a pleasing similarity, in spirit at least, to the principal plot of the work.

The narrative here is relieved in the same way, with humbler plots and conspiracies, as follows:

(1.) Phelps says "he proposed a conspiracy with Gay, which was to burn the depot at Detroit, and lay it to Boyce, because he stole from thieves."

(2.) Phelps says "he suggested two plans to get rid of Sherman, Laycock and Wells: *one* was *to burn the depot at Detroit,* and *lay* it to them.

(3.) Phelps says "Wm. Gunn told him he should get Sherman into the black hole; and if he could not get Sherman laid out, he should burn one *of the depots.*"

(4.) Gay told Phelps "he knew a first rate man and his wife whom he could get to swear that Boyce said before the depot was burned, "he was going to burn it," and to swear that after it was burned Boyce said he had burned it."

(5.) Williams said "you know I was the cause of having the cars thrown off at Leoni, although I was in bed. We can swear Laycock *did it.*" Corwin said "he would testify that Laycock came to him and wanted *him to help do it.*" Williams said "he would swear that Corwin afterwards *confessed that he did it.*" And Freeland said "he would swear both that Corwin said before the offence that he was going to do it, and that he confessed it afterwards." Phelps says that "Fitch, at Detroit, suggested" a second plan to get rid of the boys," which was by *placing counterfeit money upon their persons.*" Phelps says that "Corwin, about the same time, at Michigan Centre, suggested" the same *ingenious device.*

How delicately these pictures are worked upon the tapestry; and how delightfully they harmonize with the grand design, of fabricating matches in the log cabin at Sylvan, and carrying one in a red handkerchief and depositing it in Filley's tavern, and carrying the other in some other way and depositing it under the side-walk in front of Gay's house, in Detroit, and then swearing that the defen-

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dants delivered to them the one left at Filley's, and that Fitch and Gay admitted that the other was manufactured and delivered for a similar purpose. But I weary you. There are many more such admissions.

"The trail of the serpent is over them all."

Let us now see whether the narrative of the witnesses harmonizes in all its parts. Phelps says "that Fitch's object in visiting Detroit, on the 11th of February last, was to get Wells, Laycock and Caswell out of the way; that Fitch proposed two alternatives for that purpose, and Phelps offered to execute either. One was to burn the new depot and lay it to "the boys," and the other was to put counterfeit money on their persons and thus cause them to be sent to prison." Phelps, when asked why he left Detroit without having executed *either* alternative, answered that Fitch told him that Gay had agreed with him to burn the new depot. Thus, then, Gay was to burn the new depot, and *lay the crime to "the boys."* But Phelps had before told us that Fitch remained in Detroit to get rid of "the boys," by *enticing them away,* or getting them secure in some way: from which it must be inferred that the burning of the new depot was not to be laid to "the boys." Indeed, Phelps says that Fitch told him he had a woman staying at Gay's to put money in "the boy's" pockets; and that Joe Dows was to place pencil cases filled with counterfeit money upon their persons and decoy them to Canada. Thus, the crimes contemplated in both alternatives, were to be executed to *get rid of "the boys;"* who, after all, were not to be got rid of by means of these crimes, but were to be enticed away and persuaded to silence.

Again, Gentlemen, Phelps says that "when a match was shown to him at Michigan Centre, in January, he told Fitch and Filley he had seen such a one at Gay's." Nevertheless Gay never showed Phelps a match until after the 24th of February. Again, if Fitch delivered to Gay two matches, while in Detroit in February, why did not Fitch show them to Phelps before delivery, and why did not Gay show them to Phelps after receiving them? Phelps claims that he then enjoyed the unreserved confidence of both, and he says that Fitch had arranged an interview between himself and Gay.

Again, Phelps says, that "not until February 13th, did he ever hear Fitch mention the name of Gay." How did it happen then that Fitch expressed no surprise in January, when Phelps told him he had seen such a match at Gay's house. Again, Phelps says that Fitch, at Detroit, said he wanted Phelps to go to Niles, and light up there, and the time appointed was March 4th when Corwin and Price were to be tried at Jackson for burning the railroad wood pile. Phelps says that it was afterwards arranged that the trial of Corwin and Price was to be put over to a future term of the court, and that the burning of the depot was to be postponed accordingly. Nevertheless Phelps says, that on the 4th of March, Corwin complained of Phelps' delay in burning the depot at Niles, and Phelps innocently explains to us that he had been delaying it for Clark, the Railroad Agent to come home from Lansing. In the sequel the "boys,"

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Laycock, Wells, and Caswell, are quite forgotten; Corwin and Rice, altogether forgotten; Gay altogether forgotten; the new depot at Detroit is altogether forgotten, and on the 13th of April the depot at Niles is fired without an object or purpose.

Look now, gentlemen, at the boldness with which disingenousness and falsehood are confessed, avowed, and justified by Phelps. He says "I don't know what I told Filley at the ball alley I would do with the oxen, probably I invented something for the occasion." "What I told Corwin about passing counterfeit money was false, Lake and I concerted it together." "At Detroit I offered to take the proposition, either to burn the depot, or to put money in the pockets of the boys, and betray them in Canada. This was to make Fitch believe I was helping him." "I told Price at the ball alley, I could get witnesses from the neighborhood to impeach Sherman." I told him this on purpose to deceive him." "I may have told defendants Lemn was a d——d mean man." I pretended to Fitch that I went to Lansing to get relief from unjust imprisonment." The first time I was in Lansing I got a northern member to introduce a bill; my real object there was to see Darius Clark. I got several copies of the report containing the application, and sent them to Michigan Centre. On my return from Lansing I saw Corwin, and Farnham, and told them I was going to collect money in Detroit for a man in Massachusetts." "In the interview with Wm. B. Laycock, in January, I told him I wanted to buy Fitch's oxen, and that I could sell them for $140. I said this to deceive Laycock." "Fitch asked me on the night of April 11th, about my claim on the State. I told him I could get about $3,200." Hudson says Phelps said on the 11th of April that he had a friend in Minnesota, who had graduated with him, and he was going there next week. Phelps says, "I remember telling Fitch that the Gov. of Minnesota had written to me about coming out there. My object was to get my money when I got back from Niles.

Gentlemen, I will present no more of these shameless and boastful confessions of falsehood. Permit me, however, to ask,

1. Do you doubt now the correctness of the one hundred and twenty-one witnesses who impeach Phelps' reputation for truth and veracity.

2. Can you tell me by what rule you can distinguish what part of Phelps' statements you are to receive as true, and what part to reject as false?

3. We can well enough dispense with Wm. Dyer's testimony, that Phelps told him "it would be right to put down the Company in Jackson and Washtenaw counties, by false swearing, if it could not be done without." Phelps virtually admitted that he had said so for he stated that under some circumstances he might have made that remark, although he denied any recollection of the person to whom the remark was made.

It is my duty in the next place to show that the narrative of Phelps is in many essential points, absolutely contradicted.

1. Phelps says he saw Fitch in Jackson the day before Christmas,

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and he thinks that it was Monday; that he then agreed to go next day, and did go next day, to Michigan Centre, to see the boys, and it was Christmas. It is shown by A. H. Delamater, John Delamater Amanda Fitch, and Harry Holcomb, that Fitch was not at Jackson on the day thus designated.

2. Phelps says that Fitch's visit at Detroit, on February 13th, was concerted by appointment between him and Phelps.—He requires us also to believe that he was expected by Fitch at Detroit. The facts are that Fitch went to Detroit under an engagement with Victory Collier, and was waiting there for Israel R. Brown. Phelps' statements that Fitch conversed with him half an hour on the trunk table in the depot, is contradicted by Delos J. Holden, who having arrived on that occasion with Phelps went to Johnson's hotel immediately, and found Fitch, and staid with him at that place. Mr. Shealy, who was called to support Phelps' account of his interview with Fitch in the street, on the occasion when Fitch directed him where to find Gay, deprives that circumstance of all sinister effect. You remember that Phelps says that Fitch asked him if he had got his fish, and he answered "no;" that Fitch replied he would find some round the corner, pointing towards Savinack's grocery; and Phelps says that on going there he found Gay. But according to Shealy, the dialogue was thus: (Fitch) "have you not gone home yet?" (Phelps) "No, I have not got my fish yet." (Fitch) "You will find some round the corner." G. W. Brown testifies that he put the same question to Fitch, received the same answer, and obtained fish at the place designated. Phelps admits that he did inform Fitch, in Detroit, that he wanted to procure fish and other provisions for supplies on a job of grading the Railroad. The remnant of a barrel of fish was found on Phelp's premises, on his departure from Sylvan. Thus much for a trivial circumstance, light as air, which suspicion and fraud have magnified into "confirmation strong as proof from holy writ." You have already the fact that Willard Champlin was absent from Grandison Filley's when Phelps charges him with an admission implying guilty knowledge of the burning the depot. I have recited Phelps' narrative of a plot contrived by Williams, E. J. Price, Freeland and Corwin. Phelps fixes the scene and the time at Cuykendall's on the day when Freeland and Corwin changed horses; and says that the wicked consultation was broken up by Nathan High, who came up and asked what the privacy was. Nathan High says that he broke up such a conversation neither then nor at any other time. Benjamin Stid proves that Phelps was not at Coykendall's on that occasion. Phelps relates a conversation on the first Tuesday in March, between himself, Fitch, and Lake, concerning a proposed branch road from Jackson to Adrian; and alleges that Fitch said that "the Michigan Central Railroad would be worth nothing;" that they "would keep tearing up the track, and so keep the travel off from it." Lake recites the conversation, omitting altogether the essential part about the Michigan Central Railroad. Phelps' numerous statements of admissions, by Fitch, of having or making counterfeit money, are manifestly false.

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It may well be doubted whether any man in easy circumstances ever engaged in that despicable manufacture, or traffic. The police have searched every part of Fitch's house and premises in vain although his arrest was sudden and unforeseen.

Phelps says that, in January last on the occasion when he went to Michigan Centre with William P. Lacock, he found Fitch with Filley and Ackerson in the ball alley, and that there Fitch discussed with him the plan to prosecute Laycock and said it was a good plan if stuck to and said the rule among them was, if a man turned traitor, to shoot him on the stand, but that Miner was a weak kind of a boy and the state prison would do for him; that they then spoke of burning the depot at Niles. Fitch said he "should charge $160 for the twin oxen and would pay the balance, $40, in money; that it cost him a cow and $25 for burning the old depot; that the match to be furnished had never failed and it never would; there was no danger of failure. It was in that conversation also that Phelps represents Fitch as saying that they had prepared the match there and sent it to a man in the city and paid him $150 for burning the depot; that it was constructed so as to burn a given time and he gave instructions about it; that it had been used at Detroit as directed, and that, when it burst out, it spread so rapidly that all the water of the river could never extinguish it. He represents Fitch as saying on that occasion, still further that they had injured the Company half a million during the first year, and would double that sum in the ensuing year; that they were going to burn the new depot as soon as it was finished; that they had warned the people not to ride over the road, and, as they knew better, he didn't care a damn who was killed if it was the Governor of the State; that in case he should get into difficulty in burning the Niles depot he would bail Phelps out, and change the venue to Jackson where he could get witnesses to swear him out; that he could get a host of witnesses to put down a traitor or to screen a friend, and named them; that he could impeach the best man in Jackson County and get the best man in Jackson County to assist him in guilt."

Now mark, that he says he first saw Fitch in the ball-alley and that all this conversation was held there. Wm. B. Laycock, who, according to Phelp's own account attended him, says he never was at Michigan Centre but that one time, and that on this occasion he was with Phelps from the time they departed from his house until they returned to Laycock's house; that he was all the time within sight of Phelps and by his side or at least within hearing, that he went into the ball-alley, with Phelps after Fitch went into the bar-room, that instead of Ackerson and Filley rolling balls, *he* Laycock rolled two balls with Phelps: that Fitch then came into the ball-alley and that Phelps and Laycock rolled only four more and then they returned to the bar-room; that in the ball-alley Phelps offered Fitch $150 for his twin cattle and Fitch said he wouldn't let them go for that sum, that it was not as much as he paid for them, that this is all that passed between Phelps and Fitch in the ball-alley; that Phelps and Laycock returned to the bar-room, and Fitch followed

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them there and sat down by the fire; that Phelps standing near the bar-room window offered $120 for the cattle and Fitch replied he should not let them go for that, nor let them go at all. Laycock says he is sure he heard every word spoken in the ball-alley, and every word spoken in the bar-room, and that he has repeated every word said in either place or any place on that occasion; that nothing was said about Miner T. Laycock, nothing about burning the new depot at Detroit, nothing about burning the old one, nothing about a match, nothing about killing passengers; nothing about killing even the Governor of the State, nothing about influence nor about hosts of witnesses, nor about putting down traitors, nor about screening friends; in short that not even a word related was said there, while it appears that Phelps repeats not one word of what actually was spoken. The witness Laycock shuts out all possibility of mistake by showing that the parties did not enter the ball-alley a second time, but that after remaining fifteen minutes in the bar-room he and Phelps left the Centre and returned to the place from whence they had departed in the morning.

Phelps states that on December 19th, he went to Fitch's and rode with the young Messrs. Laycock; that he called at Fitch's house at noon, was invited to dinner, declined, didn't see the cattle in the forenoon but did in the afternoon; in a long conversation of two hours with Fitch, he proposed to Phelps to take an interest in some counterfeit money speculations; that he there made his proposition to Phelps to burn one of the depots—at Ann Arbor, Marshall, Kalamazoo or Niles, and offered him $200 for that service. Be pleased now to remember that Fitch's barn was nearly half a mile distant from his house, and that, Phelps says, the scene at the barn took place, not in the forenoon on the occasion when he called at Fitch's house, but on the afternoon of the same day, and that it occupied two hours. Then collate the testimony of Martin S. Laycock, Henry T. Laycock, Christy Blackmar and Elizabeth Palmer, and you will find that Phelps went to Filley's that morning, attended by three of those persons; that while at Michigan Centre, he called at Fitch's house at 11 o'clock in the morning; that the whole duration of his stay at the Centre that morning was half an hour; that he returned with the same party and spent the entire afternoon, evening and night in the families of those witnesses, without having returned at all to Michigan Centre that day. Bear in mind also, that, while Mrs. Phelps, could have contradicted those witnesses, if their testimony had been false, but she has since been upon the stand and has failed to do so. Mrs. Fitch has appeared here, offering to prove the interview between her husband and Phelps in the morning and the falsehood of the alleged interview at the barn in the afternoon. I have already shown you that the account given by Phelps of a conversation at the house of John Palmer in January, concerning Minor T. Laycock and implicating Palmer, Penfield and Laycock, although corroborated by Mrs. Phelps, is disproved by Christy Blackmar.

Following now Phelps' narrative until the date of April 11th, I ask you to take notice that he alleges that, on his return from Grass

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Lake to Leoni, on the afternoon of that day Corwin and Myres went with him to Michigan Centre uninvited, Corwin having paid for the spirits with which the vessel taken from Cuykendall's was filled, and that Williams excused himself from going, on the ground that he would have no conveyance in which to return. A. S. Luce, Esq., John Cuykendall, John W. Kellogg and B. F. Smith, testify that Phelps invited Corwin and Myres to go to Michigan Centre to roll ninepins, and paid lacishly for the spirits which were drank as well as for those taken away, and that Williams was not present on that occasion. We have already exposed the falsehoods of Phelps and Lake, in relation to their mysterious journey from Grass Lake to Michigan Centre, on that memorable day. Let us look now into their account of the transactions of the night. Phelps and Lake represent Fitch as having been present at Filley's house, while two distinct private conversations were held in the bar-room, and two conversations of considerable length out of doors. All the witnesses agree that the time occupied, during the conversations and transactions of that night, was about two hours. Fitch's presence during a period so long is completely disproved. James O. Cross, a reputatable farmer who was staying at Fitch's house, states that Fitch was absent from home only ten or twelve minutes. Amanda Fitch limits his absence to five or ten minutes, and they agree that he was out of his house only once that evening. Wm. H. Hudson, who was at Filley's bar-room throughout all these transactions, testifies that Fitch came in, held a public conversation of ten or fifteen minutes with Phelps, withdrew and did not return again that night.

The important points in the transactions of that evening as related by Phelps, are that Fitch took Phelps aside and said, "Filley had told him that he, Phelps was going to Niles that evening, that a lot of fellows had been hanging around them and that he, Fitch had sent Filley off with them a fishing: that while Fitch refused to pay any money in advance, he said that Phelps and Lake if successful, might come back and take the oxen, and they would pay over the balance of $60; that although this talk was private, Corwin, Myres and Faulkner heard a part of it; that Fitch, Corwin and Lake, went out of doors together and Fitch said to Phelps and Lake that rather than make any exposures if they should fail they had better dig their graves before they should go; that he would give them a match all ready; that if they should once get inside of the depot there would be no difficulty; that they (Phelps and Lake) would have to get camphene at Niles, to put into the box, because they could not conveniently carry it; that Fitch advised them to return to Grass Lake, and separating there, take the cars at different points the next morning and proceed to Niles; and Fitch then told Corwin to fix them out; that Fitch left the house, and that then Corwin opened the door of the store room, took out the box placed it in the wagon of Phelps and Lake, and they departed while Corwin and Myres went away in another wagon.

William H. Hudson was at Filley's house, before Fitch, and staid there until all had departed, relates that Fitch came in, and was in-

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vited to drink, that he declined; that then, Phelps came from behind the counter, Fitch said to Phelps, "you did not remain long at Lansing." Phelps replied, no! he had done his business up quick and had got State bonds for $3,200, and he thought that small amount better than nothing. Phelps said that his horse had run away that day for the first time; before that, the horse had been very steady. He said also, that he had a friend in Minesota who had graduated with him, and who thought he could do well up there and he was going to move there the next week. Hudson says that after Fitch went out, there was a good deal of moving about and some drinking by the persons there." Hudson remained there a period of from one to two hours.

The statement, by Phelps, that Fitch told him that he had learned from Filley that Phelps was going to Niles that night, is manifestly false: first, because Phelps did not see Filley when there that day. Filley could have learned that purpose only from Lake in the afternoon, and during all that afternoon Fitch was absent from home until Filley had gone down the last time to the lake. The statement that "Fitch said there had been a lot of fellows hanging around there and he had sent Filley off with them fishing," is equally false, because no such lot of "fellows" had been hanging around there, and Filley had gone off fishing on his own motion without any communication with Fitch.

The other statements, are equally false, because Hudson neither saw any such private consultations, nor any such withdrawing from the room, and because the time Fitch remained there was insufficient for their occurrence. Phelps admits the statements, as given by Hudson, concerning the recovery of his claim at Lansing, and his acquaintance with the graduate at Minesota. The statement that Fitch told Phelps that the match would not fail, for it had been tried several times, is manifestly false and fabricated, because the match produced and identified, has been tried, first at Niles, and then here, and has failed; and it has been demonstrated, philosophically and conclusively, that it must fail to the end of the chapter. Again, the statement that "Fitch told Corwin to fire them off," must be false, because it has been proved that Lake was in possession of the key of the store-room; and, according to his own statement, he must have obtained the key from Filley. And yet, Lake does not say that he had either given the key to Corwin, or had told Fitch that it was in Corwin's possession. These falsehoods being exposed, the principle, "falsus in uno, falsus in omnibus," applies again. The counsel for the people, claim, that Phelps' statement is corroborated by Faulkner. That corroboration consists in this, that, in a suppressed conversation, he overheard Corwin saying, "yes, after we get through." and, "I think we can come it;" that, at another time, Phelps said loudly, "Boys, when I get back from Niles, we will have a time," and Corwin said, "Yes, we will tear down Cuykendall's bar and this too." Corwin said, "I am willing to pay something in advance," and handed Phelps something. Phelps said, "This will help pay expenses over the road; all paid in advance, helps like hell." Fitch came

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in, afterwards, and three times asked, "Boys, how do you do?" and "What is the news?" that they all went out doors for five minutes and came in again, and Fitch said to Phelps, "I shall be ready for you, I shall be flush then;" that Corwin said before Fitch came, that "all would be right and money would be flush when Phelps should get back from Niles." No reliance can be placed on Falkner's statement of these details, although it may have been conscientiously made. He was a stranger there and all the persons assembled were unknown to him. Desirous as he may have been to understand and report truly, he was liable to misapprehend the dialogue and confound the persons engaged in it. It is certain that he mistook some other person for Fitch when they left the room that night. He says that he saw Fitch standing beyond the wagon when the box was put in. Fitch is proved to have left the party before that time and to have returned home, and neither Hudson nor even Phelps nor Lake says nor pretends that Fitch was at the place assigned him by Falkner on that occasion. We are asked to explain the remarks imputed to Fitch and Corwin in the recital given of the drunken revel, viz: a promise "to be flush" on Phelps' return from Niles and "that Corwin said he was willing to make payment in advance." We reply that, as to Fitch, it is manifest no such remarks were made by him, because if heard by Faulkner they would equally have been heard by Hudson, and yet Hudson did not hear them. Phelp's part of the dialogue was purposely spoken in a low voice, except a cue or catch-word uttered loudly for the ear of Faulkner. The meaning of Corwin and Myers' replies depends altogether upon the nature of the remarks which called them forth. I see nothing extraordinary in Corwin's contribution to Phelps' expenses, and his expectations of a revel when Phelps should return, enriched by the receipt of the $3,-200 to be obtained from the State of Michigan, or by payment from his pretended debtor in Massachusetts, or by a fortune to be secured through the partial favor and assistance of his distinguished friend, the Governor of Minnesota.

Gentlemen, it is scarcely necessary to remark that if Phelps' narrative is false, the relation given by Lake cannot be true. His concurrence lends no confirmation. There are, however, cross-readings by these witnesses, which require a moment's notice. Phelps testifies that Williams said he should write to the Railroad Company, through an attorney, and offer to take a thousand dollars a year, for five years, for letting them off. Lake, on the contrary, attributes this generous proposition to Corwin. When, however, the counsel for the prosecution indicate the variance, Lake reconciles the conflict by saying he has heard Williams say the same thing. It is extraordinary that Phelps should have forgotten that Corwin made the remark, and equally so that Lake had not, in the first instance, placed the remark to the account of Williams, where it belonged. Lake informs us that Fitch said, on the piazza, at Bascom's tavern, in Jackson, that it cost him a cow and twenty-five dollars to burn the old depot; that he had paid fifty dollars to the same man for burning the new one, and that he was to pay fifty dollars more after it should

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be burned; "that if we would burn the Niles Depot, we could have two hundred dollars in money, or the twin oxen at a hundred and forty dollars and the balance in money." Phelps, who was present, gives us no such details of that conversation; but presents the same nefarious statements as having been made by Fitch, at the ball alley, on the occasion of his visit there with Wm. B. Lacock, which occurred before Lake's engagement began. It is manifest, therefore, that Lake has blunderingly taken from the common diary what was heard by Phelps alone, and produced it as a confession of Fitch, heard by himself.

Although Phelps had stated that he was to be paid his expenses in case of a failure to burn the Niles Depot, yet he was leaving the stand without showing that he had received or even demanded his expenses. A juror pointed out the incongruity. He immediately replied, "They paid me before and after I went about sixty dollars, on account of expenses. Of this sum, Fitch paid me eight half dollars, two gold dollars, and one quarter eagle, making eight dollars and fifty cents, besides seven dollars paid Lake by Williams, on the same account." Lake, on the contrary, says that neither Williams nor any other person ever paid anything to him on account of expenses, nor to his knowledge, was anything ever paid to Phelps on that account. He says further, that he was present, when the eight dollars and a half was delivered and received as spurious, and that it was in fact counterfeit coin. It will not surprise you, gentlemen, to find that Phelps and Lake harmonize in their account of Farnham's infernal machine, which they saw at his gate, where there was no other witness present, in the night time, when none but they and such as they could see anything. Nevertheless, it is strange that the engineer, who fabricated the matches produced here with such profound philosophical knowledge and exquisite skill, cannot describe the mode of operation of Farnham's infernal machine for blowing up the Railroad, although it consisted of two common tin horns, bound together at the narrowest part of the tubes with a clasp. Dr. Farnham was taken from his house in the night time, without notice, and his dwelling was then exposed to the most scrutinizing search of the police; but neither the machine, nor any of its superfluous materials, nor the instruments employed in the construction of it, have been produced.

I pass on to Lake's account of the transactions of April 11th. He says that Phelps and himself arrived at Filley's together about noon, and inquired of him if "the boys" were there. You know, Gentlemen, that "the boys" lived at Leoni, four miles east of Michigan Centre; and, according to Lake, he and Phelps had just past Leoni, where they could have been found, and had came down to Michigan Centre to inquire for them, where they were sure not to be found. Lake says they told Filley, "We have come to go to Niles." Filley replied, "I am glad; we are ready for you." Lake says, "I was unwell, and laid down; after lying an hour, I arose again, came down stairs, and found Filley; we then had a talk about preparation for Niles. Filley went to the barn and brought the match. I examined it. Filley put it into the box, nailed it up, put it into the store room,

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and saying, 'it is ready for Niles,' put the key in his pocket." This ingenious narrative was, unhappily, in conflict with the testimony of Kane and Allen, who took Filley to the pond about half past twelve, before Lake arrived at his house, and detained him until between 3 and 4 o'clock. Lake removes the difficulty thus raised, while he gives a conclusive answer to Secord, the Beemans and Taylor, who have testified to his travels on foot with a match, in a box, tied up in a red handkerchief. He was sick before; and now, like Don Juan in the Shipwreck, he "falls sicker," and enlarges the period of his repose, in the upper chamber, from one to three hours. How could a man, who was obliged to sleep three hours in a day walk four miles oppressed with the weight tied up in that red bundle?

Gentlemen, I have now shown you that the testimony of Phelps and Lake is unworthy of credit, by reason of their depravity—of internal evidence of falsehood—of conflict between themselves—of flagrant avowals of deceit—and of collision with facts, incontestibly established. I advert briefly to some pretended corroborations. These are furnished, principally, by Messrs. Van Arman and Clark. Revert, if you please, to their account of the disclosures made at Gay's house. Van Arman says Clark was standing too far off to hear. Phelps was talking with Gay. Phelps gave us the signal to approach. They were talking about burning the Depots at Niles and Detroit. Phelps said he would go out to see the friends at the Centre, and let Gay know what time they would be ready at Niles. Gay said they would be ready to make a strike here at the same time. Who does not see that this conversation was contrived between Phelps and Gay, for the purpose of corroboration? Again, Mr. Van Arman, describing the transactions at the same place, on the following night, says, (Clark being present, though not within hearing,) "Gay talked with Phelps about burning the new depot, and with equal care, avoided confessing anything about burning the old one." At the same time, Phelps, having had a private conversation with Gay, told Van Arman that Gay had given leave, and thereupon Phelps went up stairs, and exhibited the match to Clark and Van Arman. What was there in all this, but a juggle between Phelps and Gay to impose upon Clark and Van Arman? You have a third corroboration in the fact that Phelps lent Gay two dollars, in February, to purchase camphene; but it is deprived of all its value by the fact that Clark had been apprised that the money was lent, and was sent into Parker's to request him to make a memorandum of the sale. Fourth corroboration: After setting fire to the Depot at Niles, with the fuse end of the match, Phelps, Lake, Clark and Van Arman returned together in the cars towards Detroit. When they arrived at Jackson, Filley was seen there, and he *looked as if he was anxiously expecting somebody*. Phelps concerted with Clark and Van Arman, that he should draw Filley into conversation, while they should listen. When a person is in a Depot, on the arrival of a train of cars, he is very apt to look as if he was expecting somebody. A conversation, of course, occurred, of which three versions are given.

First, Phelps' version: Filley—How did you get along? Phelps—

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I set the Depot on fire, but made a failure. They put it out. I have not made more than nine times. I have borne my expenses there and back. Filley—Go up to the Centre, and see the boys; they will make it all right.

Van Arman's version: Phelps—I did not make more than nine times. Filley—You had better go immediately to the Centre; the boys are waiting for you.

Clark's version: Filley— * * * Phelps— * * * Filley— * * * Of what value is a concerted corroboration like this, in which all that is necessary to explain the admissions or declarations brought in evidence is suppressed.

Gentlemen, you must have observed, that an unusual and an unknown rigor and severity have been practiced in this prosecution, by combining, in one person, the two offices of counsel and witness. Such a combination is disapproved, with as much earnestness, by legal authority, as it is feared by those upon whom its power is brought to bear.

"I will never be voluntarily called as a witness, in any cause in which I am Counsel. Should my testimony, however, be so material, that without it my client's cause may be greatly prejudiced, he may at once use his option, to cancel the tie between us in the cause, and dispense with my further services, or with my evidence. Such a dilemma would be anxiously avoided by every delicate mind—the union of Counsel and Witness being only resorted to as a forlorn hope, in the agonies of a cause, and becomes particularly offensive when its object be to prove an admission made to such counsel by the opposite litigant. Nor will I ever recognize any distinction, in this respect, between any knowledge of facts acquired before and since the institution of the suit; for in no case will I consent to sustain, by testimony, any of the matters which my interest and professional duty render me anxious to support."—*Hoffman's Legal Study. Vol. 2, p. 766.*

A word is claimed in this connection, by the witness, Dr. Hahn. He relates that in the cars, on the morning of the arrest, Fitch looked at the warrant, and said that it appeared that he was implicated with a certain George Washington Gay, in burning the Depot at Detroit. I do not know such a person. I have never heard of George Washington Gay. No witness, except Phelps, proves an acquaintance between Fitch and Gay, and Phelps proves it only by alleged admissions. This denial of Fitch, therefore, instead of being a corroboration of Phelps' testimony, is a contradiction of it. But Dr. Hahn says, further, that Fitch, after fixing his attention upon the warrant, said, "I believe that old Gay has turned State's evidence." The warrant suggested that opinion. The counsel for the prosecution criticise the use of the word "old," which, they say, is inconsistent with Fitch's denial; but it is manifest that Fitch spoke of his knowledge of affairs before the arrest. After the arrest, "old Gay's" name must soon become "familiar as household words."

Gentlemen, I trust that I have proved that the conspiracy alleged in this case, presents an immaterial issue, and is false in fact; that

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the case rests on evidence of admissions only, proved by three witnesses—Gay, Phelps and Lake; that the evidences of those admissions were false, because the facts supposed to be confessed are impossible, while the admissions are unworthy of credit, because they are unsupported by circumstantial evidence, and the witnesses who present them are unworthy of belief, and their testimony is contradictory, and is in conflict with facts incontestibly established. If these positions are true, it follows that this prosecution is the result of a conspiracy against the defendants. You have evidence of that conspiracy in the malicious threats of Wescott and Phelps; in an allusion by Phelps, showing an understanding with Wescott; in a negociation between Phelps and Gay, to predicate a plot on the casual burning of the Depot in Detroit, on the 19th of Nov. last, a plot for the ruin of innocent men; in the fraudulent manufacture of those harmless but fearful tokens, contrived to obtain credit for the narrative of Phelps; in the fraudulent transfer of those tokens, by those who fabricated them, to the possession of Gay and of Filley; and in the cunningly devised narrative of Phelps and Lake. But I will not follow that subject further. It belongs to another prosecution—a different tribunal—perhaps, to a distant jurisdiction. It is enough for our present purpose, that the defendants are not guilty.

Gentlemen, in the middle of the fourth month, we draw near to what has seemed to be an endless labor. While we have been here events have transpired, which have roused national ambition—kindled national resentment—drawn forth national sympathies—and threatened to disturb the tranquility of empires. He who, although he worketh unseen, yet worketh irresistably and unceasingly, hath suspended neither his guardian care nor his paternal discipline over ourselves. Some of you have sickened and convalesced. Others have parted with cherished ones, who removed before they had time to contract the stain of earth, were already prepared for the Kingdom of Heaven. There have been changes, too, among the unfortunate men whom I have defended. The sound of the hammer has died away in the workshops of some; the harvests have ripened and wasted in the fields of others. Want, and fear, and sorrow, have entered into all their dwellings. Their own rugged forms have drooped; their sunburnt brows have blanched; and their hands have become as soft to the presure of friendship as yours or mine. One of them—a vagrant boy—whom I found imprisoned here for a few extravagant words, that, perhaps he never uttered, has pined away and died. Another, he who was feared, hated and loved most of all, has fallen in the vigor of life,

"hacked down,
His thick summer leaves all faded."

When such an one falls, amid the din and smoke of the battle-field, our emotions are overpowered—suppressed—lost in the excitement of public passion. But when he perishes a victim of domestic or social strife—when we see the iron enter his soul, and see it, day by day, sinking deeper and deeper, until nature gives way and he lies lifeless at our feet—then there is nothing to check the flow of

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forgiveness, compassion and sympathy. If, in the moment he is when closing his eyes on earth, he declares: "I have committed no crime against my country; I die a martyr for the liberty of speech, and perish of a broken heart"—then, indeed, do we feel that the tongues of dying men enforce attention, like deep harmony. Who would willingly consent to decide on the guilt or innocence of one who has thus been withdrawn from our erring judgement, to the tribunal of eternal justice? Yet it cannot be avoided. If Abel F. Fitch was guilty of the crime charged in this indictment, every man here may nevertheless be innocent; but if he was innocent, then there is not one of these, his associates in life, who can be guilty. Try him, then, since you must—condemn him, if you must—and with him condemn them. But remember that you are mortal, and he is now immortal; and that before that tribunal where he stands you must stand and confront him, and vindicate your judgment. Remember, too, that he is now free. He has not only left behind him the dungeon, the cell and the chain; but he exults in a freedom, compared with which, the liberty we enjoy is slavery and bondage. You stand, then, between the dead and the living. There is no need to bespeak the exercise of your caution—of your candor—and of your impartiality. You will, I am sure, be just to the living, and true to your country; because, under circumstances so solemn—so full of awe—you cannot be unjust to the dead, nor false to your country, nor to your God.

MR. VAN DYKE:

TUESDAY, September 15, 1851, 8 A. M.

The Court being in session, JAMES A. VAN DYKE, Esq., counsel for the Prosecution, addressed the Jury as follows:

May it please the Court, and Gentlemen of the Jury: I cannot refrain from congratulating you that the long and wearisome investigation in which you are engaged, is so near to its close. Many months since, before the leaves were green or the flowers had bloomed, ere the spring time had departed, and while our hopes and feelings moved in sympathy with the gladdening freshness which the season shed around us, you were summoned from your homes, comforts, business and pleasures, to assume a serious responsibility, in aid of the administration of justice. Since then, while we have associated together, and day by day discharged, I trust with patience and fidelity, our toilsome, but solemn duties, time has run its ceaseless course; the summer came with all its joy and brightness—it, too, has faded away, and already the crimson leaves of the forest warn us that autumn is passing its withering fingers over the face of Nature.

I indulge in this thought because it induces the mind to reflect upon our own condition, and the vanity of acting otherwise than under a deep sense of duty. Most of us have reached the middle age

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—*our* spring time has departed—*our* summer has almost left us—*our* autumn is nigh, and ere long the descending snows of winter will fall upon our heads. All things teach the dread truth that "life is fleeting," and that we should move through its mazy paths of cares and pleasures, with hope and vision fixed on the eternity which lies beyond.

In this case, gentlemen, we have each a solemn duty to perform—let us discharge it with a high sense of the responsibility which rests upon us.

In the views which I am about submit to you, I will earnestly endeavor to treat this cause with the seriousness its importance demands, and with the candor and fairness due to you and to the Court.

While I feel pleased in beholding the laurels which this trial has entwined around other brows, I will seek to gather none for my own. I will neither wander into the paths of fancy, nor address myself to those who sit *without* the jury box. I will remember, however dull it may render me, that my duty confines me to *this* cause, I will speak *only* of it, and address myself *only to you.* I will pass over the case gentleman, as nearly as possible in the same order which has been pursued by the distinguished counsel who last addressed you for the defence. I shall not seek or hope to leave the impress of oratorical power upon your imagination, but trust, ere I conclude, to convince your reason, that *every* point urged by the defence is fallacious, and without foundation in the facts and evidence before you.

An objection of a technical character has been interposed by the counsel for the prisoners, which I propose briefly to allude to before his Honor, the Judge.

The Court is aware, that at common law, an accessory could only be indicted and tried by one of two ways, viz: *with* the principal—the jury first passing on the principal's guilt: or secondly, after the conviction or outlawry of the principal—the record of his conviction affording *prima facie* evidence of his guilt.

It being found that this rule of the common law did not operate to the furtheranee of justice, but rather to the shielding of guilt, the Act of 7 Geo. 4, C. 64, was passed to remedy the evil.

This Act retained the two common law modes of trial of accessories before the fact, and provided a third, viz: as, and for a substantive felony; and this act is substantially and, indeed, almost literally re-enacted in and by our own Rev. Stat. 1846, P. 686, Chap. 161, Sec. 2, which is as follows:

"Every person who shall counsel, hire, or otherwise procure any felony to be committed, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the principal felon, or he may be indicted or convicted of a substantive felony, whether the principal felon *shall or shall not be amenable to justice,* and in the last mentioned case, may be punished in the same manner as if convicted of being accessory before the fact."

The present indictment counts as follows, viz: 1st. Against all as principals in the arson of the Depot. 2nd. Against George W. Gay as principal in the arson. 3d. Against the other defendants as accessories before the fact.

Since the finding of the indictment, and after the arraignment and

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plea of Gay and of all the other defendants, Gay died, and the prisoner's counsel now submit, that although the indictment was well and valid up to the time of the death of said deceased, yet on the occurrence of that event, it became incompetent to proceed thereunder against others of the prisoners as accessories. The objection stated seems to be, that these prisoners are not indicted for a substantive felony, but under the common law form and rule along with the principal, and that he dying, the objection becomes valid.

I do not propose, at this stage of proceedings, to discuss the subject at length, because a Court will not here arrest the trial, or prevent the finding of the jury, unless for conclusive reason. After all the expense involved and time consumed—after the postponement of the objection to almost the close of the case—the verdict, which may dispose of the whole matter, should not unnecessarily be prevented, especially as, if adverse, the prisoners can have the benefit of their objection by distinct motion to the Court.

The learned counsel in support of their objection cite, 1st, A precedent of an indictment for substantive felony, from Archibald's Crim. Pl. 2nd, A text from Russell on Crimes. 3d, The Queen vs. Ashmall & Tay., 9 C. and P., p. 236. The precedent and text from Russell require no examination. The case from C. & P. appears to sanction the general idea of the counsel here, though not to the full extent claimed. It is a *nisi prisi* case. It does not appear to be regarded or cited afterwards as an authority. The objection of Carrington for defendant, was that the name of the principal should not have been given. The subsequent case of Regina vs. Caspar and others, 9 C. & P. 289, shows that in an indictment against accessories, the principal felon *shall be named*, and it, with the still later case, 9 C. & P. 555, shows the unsubstantial character of the objection. The more recent case of the Queen vs. Wallace & Wallace, 41 E. C. L. 113, is quite in point.—

The indictment had a distinct count against Loose as principal, and proceeded to charge said defendants as accessories before the fact *in continuation of the same count.* Loose had not been tried, was not upon trial, and had not been outlawed. The defendants Wallace were upon trial; this distinct objection was taken; over-ruled by the *nisi prius* judge; the objection reserved for the opinion of the fifteen Judges, who held the conviction correct, and the prisoners were sentenced.

Again, I claim that the offence of burning a depot was not a common law offence, and that under the peculiar language of our Statute it is doubtful and unsettled whether our Courts will hold it to be strictly a felony. Hence all the defendants may be guilty as principals for a misdemeanor under the first count, there being no accessories to misdemeanors, and all who would be accessories to felony, being principals in misdemeanor. The Court would on this ground alone, decline now to stop the trial.

But I insist further, that the third count in this indictment is a good count against the defendants for a substantive felony, and that it merely refers to the preceding count for a particular description of the offeuce. 2. Th at if it is not, the defect is formal, not substantial—"does not tend to the prejudice of the defendants," and is therefore cured by Sec. 34, p. 700, Rev. Stat, 1846. 3. That the above cases cited

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from the E. C. L. Reports, together justify the sustaining the indictment in its present form. 4. That even at Common Law the accessory could be legally tried *by his own consent without and before* his principal. Chit. Crim. Law, 219.

In the case of Ashmall & Tay, relied upon by defendants above cited, the objection was taken *before plea*, that the defendant was not *compellable* to plead to the indictment.

In the case at bar the prisoners object *too late*. They have pleaded to the indictment, have proceeded after the principal's death, and put themselves on their defence, thereby signifying consent, and have actually consented in writing, to proceed after Gay's death. It is therefore humbly submitted for these reasons, that this Court will not now entertain or sustain the objection, but permit the case to go before and be passed upon by the jury.

Gentlemen of the Jury, while in some respects I rejoice, in others I regret that we are here to-day. I rejoice that although during the long period we have spent together, death has swept away some connected with this trial—that although disease has at times visited you or your families, yet that God in his providence has, amid your prolonged and arduous cares, preserved you in health and vigor to discharge the high duty you owe to them and your country. I am glad that we can here apply our minds to the calm investigation of truth; that while the Sun of Heaven lights up our beloved city, and sheds its radiance upon the fields and forests and beautiful river within our vision, we can sit free from the excitements of life, and with an eye single to the ends of law and justice, and devote our best energies to the necessary, though laborious task of a fair and candid examination of the mass of evidence which has accumulated in this cause. I regret, on your account, that the responsibility of a decision has fallen upon you, and for myself that it has devolved upon me to say ought about these unfortunate prisoners, yet they are duties that may not be passed by or put aside. That you will discharge your duty in justice, though tempered with mercy, I have no doubt. I would, gentlemen, that I could perform mine as well. You must expect from me, gentlemen, no eloquent declamations, for I will frame no dazzling theories upon a misrepresentation or perversion of the testimony, whether accidental or designed. I will not weave a single wreath of fancy, but will seek to bind your minds and my own to the plain and unadorned truths that are apparent in this case, and which alone should influence you. Although I have to follow in the wake of elaborately prepared and eloquent speeches, I will not seek to emulate them. I will neither quote *Latin*, or decorate my periods by selections from the classic pages of Addison; nor will I follow the counsel through his terrible phillipic upon the leading witness of the prosecution, which I fear lost much of its force upon minds familiar with the strangely similar portraiture of Junius drawn in the "Vision of Judgment." But while I refrain from pursuing the meteoric fancies, eloquent phillippics, and sublime apostrophes to the "sainted dead," which have shed a false though brilliant light upon the dark details of crime revealed to you day by day, I will go through the case fairly and discuss it fully. I will "nothing extenuate, nor aught set

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down in malice. I will base my arguments upon the testimony, not as I *would have it*, but *as it is*. I will speak, not to the world, *but to you*, who can correct and hold me in judgment, if I fail to redeem the promises of fairness and candor which I make. Heaven can witness for me that I desire no fame at the expense of these unfortunate men. I will use no bitter words; I will affect no bitter loathing; I will assail neither man, woman or child, except under the urgent pressure of duty and necessity. I wish I could be spared the painful task of doing so at all. During our labors death has visited some of those who awaited your judgement—it is to be regretted. By none was it more lamented than by myself and the gentlemen associated with me for the prosecution. I hoped that respect for the inscrutable decrees of Providence, would have sealed all lips upon that sad occurrence. If it had rested with the prosecution, the dead, however guilty, would have been suffered to slumber in silence. Neither you nor I could close our eyes to the solemn fact that "those who were, are not." Death was in our midst, and though silence might veil its horrors, like the skeleton at the Egyptian feast, its unseen presence was felt by all.—But for no purpose, for no end, not even to convict the guilty, would the prosecution have invaded the tomb, and dragged the image of its lifeless tenant before you, either for unseemly invective or scarcely less seemly panegyric. The counsel for defendants have judged otherwise —it has seemed to them wise and proper to tear aside the veil that divides the living from the dead, and to invoke the "sainted spirit" of the leader of these defendants—a phantom, gentlemen, that I know will fail in the design of frightening you from your propriety, but the invocation of which entails on me in certain portions of my argument, the painful duty of speaking of the dead and their deeds, in terms which I would fain use only of the living. It would be unseemly to seek occasion to probe the deeds and motives of those who are no longer of this world, but it would be criminal weakness to shrink from the task when duty demands its performance.

Much, far too much, has been said to you, gentlemen, about excitement. However pleasing and eloquent all this may have been, like too many of the *arguments* urged upon you, they "will not bide the test." Excitement! where is it gentlemen? Surely not here. Whom does it influence? Surely not you. Examine this "excitement" upon which such impassioned appeals have been made. What is it? Four months since, thirty or forty men, charged with atrocious crimes were arrested and brought to our city. The crime with which they stood charged was one that touched us nearly. It had threatened to reduce our young and beauteous city, to a mass of black and smouldering ashes, and to entomb in its ruins, properties that were the reward of long and ceaseless toil. Charged with this fearful crime they came among us in irons, and surrounded by every moral evidence of guilt. It was natural that for a time, the public pulse should beat the quicker, and so it did, but there was no attempt at violence; there was no desire that the accused should meet ought but a fair and impartial trial, and almost before they were lodged in our jail, the excitement their arrival created was again hushed, and the pulse of our peaceful and law-abiding city again beat with its wonted tranquility;

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and as you well know, during the greater portion of this trial, but for the crowd of witnesses, the little room in which we pursued our investigations would not have been one-third full. Excitement! Among whom? Where in two hours a Jury was tried and empannelled, each member of it a resident of this city—this hot-bed of excitement—and each member of it equally acceptable to the prosecution and the prisoners. *Dangerous* excitement! It is a foul, and though I love not harsh words, a false stigma upon our city. Where could these prisoners have had a fairer trial or more indulgence extended to them? Where else in a city filled with able counsel, unengaged by the government, would the prosecution have delayed the trial, at great sacrifice, merely that counsel might be procured for prisoners, from a distance of hundreds of miles? Where, before, has such freedom of defence been suffered? Where before, have the rules of law been waived by the prosecution, that the defence might introduce all that could be found to militate against the character of an important witness? In what other instance has counsel for defence, without check or interruption, been suffered in an address to the jury, to comment upon testimony stricken from the case—to travel over the history of the country, and read unsworn letters as evidence? In the whole range of criminal reports no case can be found in which such liberal indulgence has been extended in aid of the defence of prisoners.

Much has been said to you about public opinion; but what have you or I to do with it? It cannot, and it should not, influence us. The streets may be filled with rumors and conjectures; but we are not in the streets, and such things float past us unregarded. We are in a building, for the present at least, consecrated to the administration of Justice; we are gathered at its shrine—if not a holy, a solemn one; and excitement and public opinion should both be banished from the elements that surround it. If strong public opinion exists, it is not the creation of the prosecution; and it is unjust, by implication or otherwise, to charge it upon us. If the City Press, for a time, published news in connection with this trial, that it deemed important to the public, it has long ceased to do so. If this much-talked-of public opinion exists, who made it? Not the prosecution; its lips have been uniformly closed by a sense of propriety. And I would ask those who address such language to you—Have the prosecuting counsel run through the streets, pledging their honors to the innocence or guilt of the prisoners? Have they sought, day after day, to raise an influence that might be brought to bear upon your deliberations? Have they sown distrust broadcast in the community, or gathered public meetings for the purpose of denouncing these judicial proceedings? Have they got up death-bed scenes to affect the imagination of women and children; for I presume they were scarcely designed to influence men? Have they published *sermons* of doubtful morality and perverted taste, for distribution, with reports of Supervisors, comments of the Press, and fancy scenes by youthful and ardent counsel, annexed? Have they done aught but their duty, or done that aught but fairly? Have they passed through the streets, stating that they knew, and could wager, that certain of the jury, they might name, would never agree to convict? No, gentlemen, the prosecution do no such things, and *"laugh to scorn"*

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those who do. They know *you;* they have faith in your intelligence and integrity, and await with patience and respect the result of your judgment. They know you, and despise the childish weakness which seeks, by such shallow courses, to "turn awry" the even justice of your deiiberations.

We are here to seek your verdict by no such means; we are here to discuss testimony, and, aided by lights of past ages, and the wisdom and experience of our respected Judge, to separate truth from falsehood. You have heard this testimony; you have listened to it with unwearying patience; you will soon retire, "the world forgetting," though not by it forgot, with your responsibilities gathered upon yourselves, to make up your verdict according to that law which has been well styled "the perfection of human reason," and which, however eloquently it may be assailed, even by its own disciples, who serve and minister at its shrine, bears stamped upon its venerable front, the sanction of ages, of sages, and of worlds—willing, if you can, to acquit these men; but ready, also, if your judgment and the law direct it, to find them guilty.

Permit me to call your attention for a single moment to the subject of bail, about which so much has been said to you. It is true that with the matter of bail you have nothing to do; the propriety of requiring bail, and the amount at which it is fixed, is exclusively a question for the Court. It cannot enter into your deliberations, or form any portion of the ingredients from which you are to extract your verdict; and the same may be truly said of many other topics upon which you have been eloquently addressed. Yet as the prosecution has been assailed in relation to this question, both out of court and in it; as it was the foundation of a highly wrought and elaborate appeal to you, you will admit the propriety of my saying a few words in relation to it. Why the eminent counsel should have addressed you upon this subject I am at a loss to conceive. I can scarce believe he would pay you so poor a compliment, or that his own judgment would be so much at fault, as to suppose you such men as even his acknowledged power could seduce from the path of duty you are sworn to tread, or deceive into the fabrication of a verdict upon a matter that is is in no sense submitted to you.

A case of *supposed* oppression is a tempting field for the display of rhetorical powers, and did I possess the fluent tongue of the eminent counsel, I too might be tempted to create a field suited to my taste, abandon the dry details of this case, and sport "fancy free" around it.

If the oppression and tyrany described in relation to bail did actualy exist, sympathy with its victims would be an emotion natural to the human breast, and it would naturally become the chosen theme of the conscious orator, but even then, gentlemen, to it, you would have nothing to say. Laws which we ourselves have framed, and which we have not yet deemed fit to alter, has vested the decision of such questions not in you, but in the court; those who disapprove of that law —as undoubtedly they have a right to disapprove,should address themselves not to jurors sworn to administer law *as it is*, but to such popular assemblies as can influence a revision of the obnoxious statute.

But again gentlemen, does this tyranny and oppression really exist, or is it

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——— "a false creation
Proceeding from the heat oppressed brain?"

You will readily concede that persons suspected of crime should be arrested when the evidence of guilt is *fair and reasonable.* If arrests were only made when guilt was a matter of absolute certainty, they could never be made at all, for guilt is certain, only after conviction. Then, there was no oppression in arresting the prisoners.

If a Grand Jury after careful investigation thinks proper to present an indictment in the form prescribed by law, you will concede there is no great oppression in saying that the accused should be submitted to the ordeal of a trial. But how ensure a trial? If left at liberty the guilty conscience would prompt to flight, the guiltless alone would abide the issue, and courts would be engaged in the constant trial of innocent persons. There is no alternative left but to confine the accused, or require bail in such amount as will ensure his presence at the final ordeal.

The system of bail is not after all the instrument of oppression but one of the great safeguards of society—converting the trial of criminals from chance to reasonable certainty.

But we are told the bail demanded is exhorbitant. The amount of bail fixed is large, but it is fixed as it should be, with reference to the enormity of the crime charged—the circumstances of the prisoners—and the inducements that would lead them to flee from justice. The prisoners differ widely in worldly circumstances—the more wealthy could more easily find bail in a large amount—their social position too would involve a greater motive to escape conviction—and therefore a wisely exercised discretion has varied the amount of bail required, in accordance with the individual circumstances and position of the prisoners. The object of bail is not to fix a price upon the avoidance of a trial, and thus compromise with crime. Here where the laws are mild but strictly and impartially administered is not the place where "offence's gilded hand may shove by justice." The design of bail is to secure the presence of the accused. No more has been required in this case. I beg you gentlemen to let your recollections revert to the time when this question of bail was legitimately debated before this Court, though in your presence—and without knowing your opinions, ask, with confidence; did you then think it was exhorbitant? If you did not think so then, why should you think so now? Surely not, because you then heard it calmly discussed before his Honor, and since fervidly before yourselves. You will remember that it was stated that the defendants could furnish any amount of bail; persons so vaunting, and charged with one of the highest offences known to the law, should be held to bail in no light sum. Interesting calculations have been placed before you, and you have been shown by figures "which never lie" but which I confess have *sometimes* deceived me, that the bail required, swelled up to an enormous sum and perhaps it does, but it does so by process ofmultiplication. The fact that there are forty defendants, does not lessen the character of the guilt of each one nor should the complicity reduce the amount of each individual's bail. It would follow therefore, that the aggregate amount of bail would be forty times as great as that required if there was but a single defendant, a result that does

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not indicate oppression but which in the hands of an ingenious mathematician produces very high sounding figures.

I will waste no more of your time upon this subject; it is the same which was duly considered and calmly decided in an early stage of this trial. It has been resuscitated and brought before you surrounded by heated invectives against "corporations," but as corporations chance to be governed by the same law as individuals, and are entitled to the same protecting care, I confess I fail to perceive that even this new ingredient makes out the case of "tyranny and oppression."

Again and again you are told that Death has visited and thinned the ranks of these unfortunate men; and the corse and its shroud are seized upon as fit pictures to disturb your visions, in the hope apparently of making you shudder as you gaze. And because Providence has deemed it fit to remove two of these defendants, shall we be told in deliberate argument, that you are therefrom to infer the innocence of those who are left! Is such to be the basis of a solemn verdict?

Permit me to ask you gentlemen—what have you to do with death-bed scenes—false in fact, morbid in taste, and wholly irrelevant to this issue? You will I am sure, entirely dismiss from your *imaginations*, these ghostly fancies, which your good sense has doubtless prevented from finding lodgment in your *minds*.

But the picture is a fancied scene—destitute even of the merit of simple truth. The dying words, which are now so sought to be perverted, were in fact of far different import; and were flung off from a fevered brain amid the fearful delirium of deathly collapse, and let me say, dressed up as they now are, they would meet from the deceased, could he hear them, no sign of recognition—naught but the smile of derision. They might serve to adorn the page of some yellow covered novel—they have served to grace two elegant perorations—but they scarcely seem appropriate in the argument of a trial of such magnitude and importance. I regret that the last delirious moments of the dead should be the subject of public comment; but as counsel on the other side have thought otherwise, it is my duty to follow them with the truth, and it will be the duty of the Court to tell you to banish them from your minds, if perchance they linger there.

Gentlemen, you have been gravely told, that "you stand between the living and the dead," that "the lightest error in your finding, will prove a source of constant remorse," that "the thought should make you tremble." If this indeed be true, you may well tremble. Uncertainty and imperfection are stamped upon earth, and upon Man, *its* choicest production, and upon *his* proudest efforts. Feeble man talking of certainty! His loftiest fabrics crumble beneath the step of time; or are crushed or scattered before an hours' breath. His cultivated intellect—his glowing mind—lie shattered and quenched in a moment's space. No gentlemen, no such fearful responsibility rests on you—no such unerring certainty is required of you—and if he who seeks to grasp or attain such perfection, will only realize how

"Vaunting ambition doth o'er leap itself."

Neither reason law or sense requires from you the exercise of superhuman attributes. You are bound to exercise caution, care, and deliberation—to weigh the evidence with your best judgmen—to sift it with

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your keenest penetration; and having done this, to state honestly the convictions of your minds—no more and no less.

In this connection, I beg to call your attention to the following passage, found in pages 386 and 7 of Cowen & Hill's notes to Phillip's Evidence, and which is a portion of a charge delivered to a jury. It will have more effect on you than any language of counsel and will explain away the sophistry that seeks to engender fears and doubts in your mind.

"It has often been said by counsel that Jurors in rendering a verdict *swear* that the prisoner is guilty or not guilty. The Jury swear to no such thing; they declare in rendering a verdict the result of the conviction of their minds from the evidence produced, having previously sworn to give a true verdict according to the evidence."

Speaking of the extreme cases so often cited before Jurors the same learned author says:

"The plain, practical rules of evidence established for ages should not be shaken by such collections of cases in the works of theoretical writers. Such cases may be inserted to induce greater caution in jurors; but if employed for any other purpose, their application in the generality of cases depending on circumstantial evidence is dangerous in the extreme."

[The learned counsel read several other passages from the same author, to the effect that jurors, even though they sometimes erred, were not accountable for more than a wise and careful exercise of their judgment, and then proceeded:]

Gentlemen, in this case, I cherish no resentment. I feel no wound. My breast bleeds from no poisoned shaft. My heart harbors no other feeling than kindness to all concerned, and most happy would I feel, if consistently with duty, I might avoid saying a single word that could bear a personal applicatication to counsel or others. But the stern dictates of duty compel me to say that the learned counsel who has preceded me, has argued to you upon a false basis—whether it was the result of accident or design, it is not for me to insinuate. But it is for me *now* to say, and hereafter to *show* to your entire satisfaction, that you have not been frankly dealt with. The testimony was presented to you, through a false and discolored medium. After the announcement made several days since, by one of the counsel for defence, that their entire time, from almost the commencement of this case, had been occupied in making extracts, analysises, codifications, and tables of the testimony, which would be presented for your consideration by his distinguished associate. I did expect that matter, so laboriously and elaborately prepared, would have been characterized by at least some show of fairness and candor. Has it been? The coloring of testimony is one of the most frequent errors of counsel; where this arises from warm and hasty discussion, it is excusable—for it is natural that the mind heated by debate and recalling the evidence, by the sole aid of fallible memory, should lend to it the tinge and hue of its own warm hopes and feelings. But whether the same charitable excuse can be extended to written tables and extracts—"cold inanimate matter"—compiled line by line and figure by figure, by the sun's bright beam, and the lamp's glimmer, it is not for me to say; but it is free for you

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to judge. If the fervent zeal of counsel has led them unconsciously into this error, far be it from me to censure them, or do more than correct their mistakes. The office of advocate is one of the highest trust and confidence. In no other relation of life does man place all that he can love and cherish so entirely in the hands of his fellow; and he is unfit to discharge its sacred duties, who has not zeal, and sympathy, and ardor sufficient at times, amid the hot excitement of argument to lead him even into errors. Faults thus arising, partake largely of the characteristics of virtue; they spring from the same source as our holiest emotions, our best and gentlest feelings hang around them in graceful drapery; and though duty might compel me to remove the veil, I would do it gently, and not with a ruthless hand.

But it is different when these errors spring not from impassioned ardor, but from midnight study. In the latter case, they should arm jurors with a degree of suspicion, but of all this, you will have to judge. It is mine to tell you that the testimony has been unfairly stated to you, and that almost every point taken by the learned counsel, has been erected upon a misstatement of the evidence. I am conscious gentlemen, that this is a bold statement; and that if I fail to maintain its truth, it will react upon the prosecution. But if you follow me carefully as I review the argument of the counsel, and read the testimony in connection—not from *manuscript* extracts, but from the printed evidence which many of you hold in your hands, I have no fear that you will deem I have overstepped the bounds of truth.

After disposing of some other preliminary remarks of counsel, I will call your attention back to the points urged in connection with the evdence.

The learned counsel has solemnly informed you that this *is* Detroit—a proposition based upon truth, and to the entire accuracy of which, I am thrice happy to assent.

He has further informed you that upon the line of the Central Rail Road there are some humble hamlets constituting Leoni; that fifteen years since, the Legislature of this State, commenced the construction of a great thoroughfare, which passed through that same town of Leoni; that its agents were kind to the people, and the peaceful occupants of this "*small district*" reciprocated the feeling; no cattle were killed; the engine and its train passed safely by—and no murmur of complaint disturbed the quiet harmony of the scene; that in an evil hour, the State forgetting what was due to herself and the people, sold the road to a heartless and greedy Corporation—then the scene was changed—tyranic agents frowned—cattle were killed; complaint was followed by imprecation—and amid the humble hamlets of Leoni, was commenced a struggle—which in a form of justice, a grave and distinguished Senator tells us "can have but one end in a country where jealousy of corporate power can never be suppressed."

Such, gentlemen, is the fancy sketch drawn for you by the defence. It is simply *untrue;* but you must permit me to tender my meed of admiration to the luxuriant imagination that could paint such a scene from such materials, one so gently beautiful—so unique—so totally unlike any thing that was ever seen or dreamt of round "the *rural* districts of Leoni."

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Gentlemen, the true history of the road tells an entirely different tale; that from the hour when the first locomotive left this City, down to the hour when the State sold her interest to this Corporation, there was nothing but trouble and heart-burnings from this very cause; and in this very town of Leoni, that among the very first who raised the cry of complaint and hostility, was Abel F. Fitch; and that the seeds of enmity which have since ripened into such bitter fruit were planted and had sprung to goodly growth, even while the road was still managed by "the kind and gentle agents of the State."

I tell you as a matter of history, that the Company has, in respect to cattle killed, pursued the same policy as did the State. I will show you the truth of this, and then you will judge of the consistency of eulogizing the one and denouncing the other. When the late Mr. Wells was Superintendant, the State refused to pay for cattle killed; afterwards, perhaps, as *elections* approached, it did pay for awhile, but soon found it was creating a cattle market at every crossing on the track; that to pay for such *accidents (?)* would drain the entire revenue of the road; and the old and only true policy was adopted. I will read you a sentence from the Report of the Board of Internal Improvement made in 1845, while the road was still managed by the State, and then tell me if it is I or the counsel who paints your fancy scenes? I refer to Joint Documents of 1846, No. 4:

"The amount paid for killing and maiming cattle is becoming enormously large. If animals are allowed to run upon our tracks, very many must inevitably be killed; and when no want of care on the part of the engineer be proven, should not the loss fall *entirely* upon the owner of the property destroyed." "If the owner is not debarred from collecting any portion of the loss, should he not at least share in the risk, say to the amount of one half of the damage?" Such was the policy of the State, and the latter and kindlier of the above suggestions has been the policy of the Company; and the people along the line, save only in Leoni, have generally acquiesced in it.

What has been the history of the road while in the hands of the State? For years it dragged its slow length along; an incumbrance and a burthen. The State needed engines, cars, depots—every material to prosecute or sustain with energy or profit, this important work; but its credit was gone, and it was immersed in debt. Our population was thinly scattered across the entire breadth of the Peninsula. Engines dragged slowly and heavily through the dense forests. Our City numbered but 12,000 people; our State was destitute of wealth; our farmers destitute of markets; our laborers destitute of employment; and so far as the interests of the State and her people were identified with the Railroad, itpresent ed a joyless present, a dark and frowning future.

In a fortunate hour, the State sold the road, and the millions of this denounced Company, were flung broadcast through our community; they took up the old track, relaid a better one, extended the road to the extreme line of the State—laid down at enormous cost; over 400 miles of fences to guard the property of all, save those who wanted a beef market at each crossing; multiplied the accommodation seven-fold —quadrupled the speed—increased traffic and commerce, so that while

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in 1845, the State passed 26,000 tons over the road; in 1850 the Company passed 134,000 tons; created markets for our products, snatched the tide of passing emigration, from the hands of a steam-boat monopoly, hostile to Michigan, and threw it unto the heart of our State, until now, where heaven's light was once shut out by dense forests, it shines over fertile fields, and rich, luxuriant harvests, and the rivers of our State, which once ran with wasteful speed to the bosom of the Lakes, turn the machinery which renders our rich products available. With them Capital made its home amongst us, our credit was restored—hope and energy sprung from their lethargic sleep, labor clapped her glad hands and shouted for joy; and Michigan bent for the moment, like a sappling by the fierceness of a passing tempest; relieved from the debts and burthens, rose erect, and in her youthful strength, stood proudly up among her sister States.

Who shall stop this glorious work, which is spreading blessings and prosperity around us? Who shall dare to say, "thus far shalt thou go and no farther?" Who shall dictate to it after doing so much? Must it now pause and rest in inglorious ease? No, gentlemen, it shall not be stayed; it shall speed onward in triumph; it shall add link after link to the great chain that binds mankind together; it *shall* speed onward, still onward—through the gorges of the mountain—over the depths of the valley, till the Iron Horse, whose bowels are fire—"out of whose nostrils goeth forth smoke," and "whose breath kindleth coals," shall be heard thundering through the echoing solitudes of the Rocky Mountains, startling the live Indian from his wild retreat, and ere long reaching the golden shores of the far off Pacific, there to be welcomed by the glad shouts of American freemen at the glorious event which has conquered time and distance, and bound them by nearer chords to older homes and sister States.

A detestable Monopoly! These railroads built by united energies and capital, are the great instruments in the hand of God to hasten onward the glorious mission of Religion, and Civilization. Already is our Central Road stretching forth its hands, and giving assurance that soon shall its iron track reach across the neighboring Provinces from Detroit to Niagara; and that ere long the scream of the locomotive shall be heard over the sound of the cataract—which shall thunder forth in deafening peals, that glorious event. Our brethren on the shores of the Atlantic, with whom we are bound by every interest, association and affection, will hail the shortened tie with ardent welcome.

Beneath the beneficial influence of Companies like this, space is annihilated; weeks are reduced to the compass of days, and in spite of the wicked purposes of bad men, this and kindred Companies shall continue to spread and contribute to the greatness and prosperity of our country, until the earth vibrates with the pulses of her glory.

But Leoni is a "*a rural district.*" It is one of the oldest settled towns of the State; but its statistical history tells a strange story of its progress, and gives a sad incident of its welfare. While a vast tide of emigration has poured itself into our State; while forests have become fenced and cultivated farms—rural districts, populous ones—villages, towns and cities—in every other part of the State; in Leoni—this place of "hamlets," and "refuge of virtue"—the population has

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decreased—its population in 1850 being less than in 1845; a significant fact, gentlemen, and one that indicates that, if it is "a rural district" now, it will be still more emphatically a *rural* district ten years hence, unless a better and more law-abiding spirit takes up its abode in the hearts of that community. The truth of this anomaly in the statistical history of our State, will be found in "Munger's Landmarks," and other statistical tables.

But, gentlemen, you are told the Railroad Company employed spies; and, in the hope to rouse your prejudice, a fierce denunciation has been poured forth against them. 'Tis true that, at the close of his remarks, counsel tried to spread a little sweetness over the poison he had scattered; but, gentlemen, you nor I cannot soon forget the bitter terms in which these men were assailed. We cannot forget the language used, or that such men as Mr. Van Arman, Mr. Clark, Taylor, Hudson, Faulkner, Rogers, were named, and held up with every term of obloquy, as spies, unworthy of credit. Of Mr. Clark, who, I perceive, is not present, I may say a passing word. It may seem wise to counsel; the spasms of a hopeless defence may demand an attempt to fling odium over the fair fame of a good and worthy man; but he who wantonly assails Darius Clark, in this community, is mistaken, and will find, in the end, that his bitter speeches, like Arab curses,

"Still come home to roost."

Gentlemen, there is not, in our entire State, a man better known, more loved, or more respected, than Mr. Clark. Kindly in disposition, courteous in demeanor, and possessed of a high order of abilities, his fellow-citizens have again and again conferred on him offices of the highest trust; but lives there a man who can say he has discharged them with aught save honor to himself, and benefit to his fellow-citizens? His home is surrounded by friends who love and admire him; and I fear that the bitter words of the counsel will grate harshly on many an ear. I submit to you, gentlemen, that imputations of discredit cast upon such a man—a gentleman of high character and position, and of unblemished reputation—are both improper and unwise; and that counsel who became such unjust assailants, forget

"That he of old, who struck the oak,
Dreamed not of the rebound."

But it is said others were employed who do not stand so fair and high; even so, gentlemen; I am still too obtuse to perceive the impropriety of employing them to find out the guilty perpetrators of these outrages, nay more, I think the duty of so doing was due by the company to the community, even more than to itself.

Let me recall your minds to the outrages on this road. What was its state? What would have been its proba le fate had criminal inaction marked its management?

Whether sitting in your homes or attending to your business, you must have herad that the passage over it had become dangerous—that in consequence travel was almost diverted from it. It is a matter of public notoriety, that the company was compelled to stop running a night train, as to do so, endangered the lives of passengers. Engine after engine was flung from the track—bullet after bullet whistled

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round the engine house, till the passage of Leoni, "the rural district," became one of peril and danger, and the engineer who passed in safety returned thanks to Providence. Under such circumstances what was the company to do? Arm men? take the law into their own hands, and shoot down aggressors along the line of the road? Were they to rest until hundreds of lives were sacrificed? until the line of the road was made desolate and waste, and the soil of Leoni was enriched by the mangled bodies of our citizens? Ask yourselves the question, gentlemen; would you have entrusted yourselves or your families, over that road in the night time? You know you would not. Under such circumstances it was not only a right, it became an imperative and solemn duty to use the most effectual means to arrest the work of devastation, and stay the crime stained hands of those who would murder, not by units, nor by tens, but by hhndreds. In the language of one equally eminent for talents and virtues, "if in her whole wide armory, justice had but one weapon that could pierce the aggressors, they were bound to use it." It was a duty they owed to the public, and for the non-performance of which they would have been held strictly to account, Had this company failed to use the only effectual made of bringing guilt to light or punishment, what would have been the result. Limb and life *were* perilled, they would *have been* lost. Our State would have been disgraced. Already travellers, under the salutaroy warning of handbills, braved the passage of the lakes in the most stormy season, rather than the still more perilous passage of Leoni, and soon our lovely Peninsula, branded by crimes more fearful than any that have yet marked the history of our country, would be shuddered at and passed as worse than a moral charnel house.

But what means should be used? The only effectual means were to employ men who might gain the confidence of that community, and become the repositories of the fearful crimes that had made Leoni notorious. Experience taught this truth—that crime stalks not in the sun light, but loves darkness. You will remember that while the obstructing of an engine is the most fearful and terrible crime that the human mind can contemplate, it is also one easily accomplished, with every protective against detection. It can be done in the night time, by a single arm and in a single moment. You will remember that the guilty bosom unburthens itsely only to what it deems a kindred spirit. You will remember that, although these outrages continued during the space of two years, although every ordinary means of detection was resorted to, no guilty perpetrator was detected. It was in vain that ordinary police were stationed along the road. The allies of this fearful combination were in every place—they penetrated into the offices of our prison agents—they insinuated themselves even into the employment of the company—they were apprised of every ordinary movement—and whenever a watch was placed the spot was known, and the offender passed further on; they laughed at every ordinary precaution, and grew fearfully bold from lengthened impunity. From the breaking of a hand car in '49, they made rapid strides, till in 1850 they contemplated the shooting of every engineer, the entombing of whole trains, and the burning of depots. And, gentlemen, you will

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not forget the significant fact, that although it is conceded that these outrages were continued for years, no offender was discovered till these spies were employed. Somebody did those deeds, for they were the work of human hands; butuntil spies were employed, no single act was ever traced to the conviction of its perpetrator.

But you are asked why did they not employ wholly men of high character and position, instead of the graduates of State Prison; a wise question truly. I fear gentlemen that even if the Company could have induced the loftiest and best of our citizens, such menfor instance as Bishop McCoskry or Dr. Duffield, who I see have honored us on this occasion with their presence, to undertake such an office, their exalted characters would have added little to the success of their undertakings. I fear that ere they could win the confidence of these defendants, they would have to serve a long tutelage under the Rev. Mr. Billings, the accomplished guide and preceptor of the unfortunate Hawley. I fear even my respected friend, General Williams. who sits before you, or any other man distinguished for high character and integrity would fare no better. It is idle to talk; the dictate of every rational mind is the best assurance that the class of men employed were of the right character and stamp.

But again, gentlemen mark the extra and abundant caution taken. Altho' the Company had faith in the truthfulness of these men, they resolved to satisfy the public also; they guarded against the possibility of false accusations; no statement from any source—subject even to suspicion was acted upon until abundantly corroborated. The evidence has shown you this; thus when Phelps reported the important fact that Gay had confessed the burning and exhibited a match, Messrs. Van Arman and Clark took pains to assure themselves of the truth of the report, that in due time they might assure you. When the Niles match was to be delivered "honest John Faulkner," as, even the prisoners counsel have called him, was sent for to be present, that no deception might be practiced. And so throughout all the evidence; altho' it has been again and again rung in your ears that this prosecution rested entirely on the evidence of Phelps, Lake and Wescott, you will find in fact, that every material thing which *they* prove, is also proved or corroborated by other witnesses against whom no breath of suspicion can be raised. You will remember that the learned counsel, tho' he might well trust to his own eloquence, pressed to his aid the eloquence of others, and cited a long passage from Addison on spies—the context would show you that Addison spoke of those who became spies for a culpable purpose. When the counsel took the trouble of transcribing the passage that he might read it to you from his manuscript, I regret that he omitted the following sentence which would have rendered the quotation strictly applicable: "As it is absolutely necessary for rulers to make use of other peoples eyes and ears, they should take particular care to do it in such a manner that it may not bear too hard on the person whose life and conversation are inquired into." You will perceive gentlemen that in this case the advice of Addison has been strictly followed.

Having thus disposed of matters which, though not strictly in the case, I could not suffer to pass unanswered, I will proceed to a calm

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investigation of the evidence. I will answer the points taken by counsel one by one, and as nearly as possible in the same order in which they were presented. As I take them up I will read the testimony bearing upon them. I will endeavor to point out the particulars in which I conceive that testimony has been misrepresented: And I ask you gentlemen to watch closely that I state the testimony fairly and truly—I respectfully request the court to correct me when I err, and shall be pleased and grateful if counsel for defendants will admonish me whenever I read the testimony unfairly or misstate any of their propositions. My sole desire is to ascertain the truth, and enable you to take a fair, just, impartial and comprehensive view of this case.

You will find as I proceed gentlemen, that I shall not weary you by any elaborate argument—for a statement of each point urged by the defence, and the reading of the testimony bearing upon it, will in most instances be a sufficient answer.

The learned counsel has gravely told you that Phelps was the first who ever mentioned the subject of burning—that to burn a depot and charge it upon his friends at the Centre was a proposition by Phelps to Gay, and having laid this unfounded basis, all thro' his address he continues the idea and argues that every scheme charged upon the defendants partakes of the character of this, *the* first design and hence must have originated in the same brain.

This argument falls to the ground if the design was the plan of Gay and not Phelps. Nay more, the argument would remain to prove by their similitude that the others also were the offspring of Gay and his associates—"his friends at the Centre."

To decide between myself and the counsel I refer you to the testimony of Phelps on page 9, where he relates his first interview with Gay.

"The conversation was first introduced by speaking of some men who had been arrested for counterfeiting—one Van Sickles and Van Houton, and what would be the best mode of getting Van Sickles liberated. *Gay proposed* several modes, and mentioned the burning of one of three or four of the depots of the Central Railroad, and stated the mode by which he could be liberated by the burning of a depot. The plot was as follows:

Mr. Van Sickles, who was then on bail, for counterfeiting, could be placed in jail—the depot at Ypsilanti, Ann Arbor, or some other one be burned, and on furnishing information of who fired it, Van Sickles could get released, and they could also doubtless get $1,000 reward from the Railroad Company, for the information, besides getting $200 from his (Gay's) *friends* for setting the fire.

It was suggested that the burning should be laid to Joseph Boyce."

Also to Mr. Clark's testimony, page 12.

Heard from Gay his plot of charging the burning of the depot upon Boyce, (as related by Mr. Phelps.)

Also, the testimony of Mr. Van Arman on page 12.

"Went to Gay's house again the next night, and had a conversation with him—Gay said they could get $1000 for burning the depot at Niles, and divulged his plot for swearing it upon Jo. Boyce, by a man and his wife."

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I think I am safe then gentlemen, in asserting that according to the evidence, the plot was the suggestion of Gay, and *not* Phelps; and the design of Gay was to charge the burning on Boyce, and *not* upon "his friends at the Centre."

There is much force in the argument of counsel that a similarity of design indicates identity of authorship. We find Hawley testifying as follows in regard to Phelps:

"He told me he wanted me to burn a depot in Detroit, and that he would give me a sum, I think $50, for doing it; he said the R. R. Co. would offer a large reward, that he and I would swear it upon men who lived on the road and who had their cattle killed or were otherwise injured—that I should have my share of the reward."

Here is the Boyce plan slightly varied, and whence does it come; not from Phelps—he denied it, and Hawley has in your presence confessed that he swore falsely; that he was suborned to commit deliberate perjury; that he never saw Phelps; that the words I have read were put into his mouth by the Rev. Mr. Billings, the friend, pastor, partizan, and associate of these defendants. Gentlemen, further comment on this point is unnecessary.

The learned counsel also urged upon you the improbability of Gay confessing his crimes so freely while at the same time he asserted he would place himself in the power of no man. But you will remember gentlemen, altho' I perceive it is not so reported *in the published* testimony—that the remark of Gay was in answer to a question by Mr. Van Arman whether when he saw the Prosecuting Attorney in relation to Boyce, he would inform him that he knew who burned the depot, and Gay replied, "he was'nt such a d——d fool as to place himself in any man's power."

If this is a true statement of the testimony, and counsel do not seem disposed to deny it, this point also is answered by reference to the evidence, for however natural it was that Gay should not place himself in the power of the public prosecution, it was equally natural that he should unbosom himself and boast of his offences to those whom he deemed equally abandoned and criminal with himself.

Mark me gentlemen, I do not charge these misrepresentations as the result of design, as the gentlemen had *only four months* to compile their extracts, they may be the result of haste; but I do charge that as we proved, we shall find that every point made by the defence is based upon similar accidental perversions of the testimony.

Another favorite theory with the defence is, that when first on the stand in May, Phelps did not name the persons whom Gay stated had procured the burning of the depot—that instead of the name he used the phraseology of "the persons." Truly, so he did, but why; because on that day the prosecution stipulated to introduce only evidence respecting Gay, and under it the defendant's counsel objected to the witnesses mentioning the name of any defendant save Gay, and therefore the expression of "the person I," was used.

The counsel for defendants has ingeniously argued that as there is no communication shown between Gay and these defendants, that therefore they were strangers and unknown to each other. Let the testimony speak.

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Phelps tells you on his first examination that Gay informed him that he got the match from *his friends*; and, altho' neither Mr. Van Arman or Phelps were suffered on the first day to mention who those friends were, when Mr. Van Arman was recalled for cross examination the defence opened the door, and at page 174 he testifies in relation to the same interview with Gay:

"On the last night we were at Gay's he told us he burnt the Depot last fall, and that he was hired to do it by his friends at Michigan Centre; said they would give him $200 for burning the new depot which he said was $50 more than he got for burning the old one. He mentioned the names of Fitch, Filley, Mount, and I think O. D. Williams as among his friends; wished Clark and me to go immediately up to Michigan Centre with him and get acquainted with them. Said his friends at the Centre, had furnished him with the tools to burn the depot. He wanted us to come up next day, and spoke of the plan to burn and lay it to Boyce; said he would see Stuart the next day and see whether Boyce was in jail."

Lake also, at page 164 tells us that Mount said "he knew Gay since he was a child, and had come to this country with him." Does not this testimony answer the objection? will it be said that Gay only pretended to know these defendants when we find him urging Clark and Van Arman to accompany him immediately to the Centre to be introduced to them? Will it be said that his connection with them was of an innocent character when the very business on which he wished to introduce supposed criminals, was connected with breaking jails, burning depots, and passing counterfeit money? The impress of truth is on the narration, it comes to you from the lips of two gentlemen of character and reputation; it shows that Gay for once at least was truthful; that he was since in the confession he made; and that he was linked by no common ties with the men to whom he felt such assurance in intruding with two supposed malefactors. And yet, you are told there is nothing to show that Gay knew any of these defendants. But you were told so not in connection with the whole, but a selection of the testimony. It is not necessary to refer to the testimony of Phelps in reference to the interviews between Fitch and Gay in February, nor that of Wescott in relation to the night visit of Fitch to Gay's house, to show association; the testimony of Clark and Van Arman alone establishes an intimacy of no common character between them.

You are, however, told to be cautious lest you sacrifice the rights of citizens to the *behests* of dangerous monopolies. If the warning was heeded, it might be well enough if conveyed in the spirit of moderation, but when coming with malignant fierceness, it was not difficult to perceive that the "energetic bile" of the eminent counsel was *permitted* to gush forth for none other than sinister purposes.

Gentlemen, I respectfully submit that in this country we have little to fear from the power—the "undue influence," or the "bloated wealth" of corporations. It is not with them, or us, here as in the old world. Here, public opinion, public prejudice, and watchful jealousy are so powerful, so wide spread and so vigilant, that no incorporated body would long venture to trifle with, or unnecessarily dare them. The

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law is so easy of access, its administration so public, and so subject to review, and the spirit of the age so distrustful of aggregated power, that redress, so open to every citizen, is sure to protect him against undue encroachments, and, in truth, gives him the vantage ground over his apparently stronger antagonist. Again, the stock of these incorporated bodies are owned by large portions of the people themselves, from various parts of the country; are controlled by divers views, and represented by different spirits; are constantly changing hands, by sales and by death, and consequent devise and inheritance; but over and above all, such bodies as the M. C. Railroad Company are essentially dependant on and identified with the good will of the people, and the increase, prosperity, and welfare of the country, and in fact, possess few, if any of the objectionable features of "hated monopolies." They are absolutely necessary. Individual effort would never accomplish their great ends, and without them this expansive country of ours, now bound together by iron bonds, with its every wealth and power developing, with its most distant points brought near together, and with its broad surface all over lustrous with glowing prosperity, would have dragged and halted in her bright career. The advance of weeks now, would have required years; distance would still separate friends and interrupt business. The wide extent of our country, instead of being a blessing, might have proved a curse and cause of separation, for far distance and long absence, great inconveniencs and apparent contrary and distinct interests, would soon chill old associations, and turn the current and spirit of portions of the county to other projects and different views.

I submit that the history of such Corporations, their past doings, present deeds, and future prospects, in this country, should not lead us to too much distrust. They have done well for the whole country, and promise still brighter and broader visions and fruitions for us and for our children.

Take New England for an example of the fruits of "hated monopolies." With an uninviting soil, a eold climate, a rugged and rock strewed land; what has corporation and joint capital done for her?—What has it not done! It struck the rock and the living waters of her power, gushed forth; it has trammeled her mountains; dammed her rivers, crowned her with Manufactories; made her days and nights tremulous with the power of her machinery; given labor to the people; dotted her over with churches, colleges and school-houses; covered and clustered her with art, and science, and wealth, and knowledge; with peace and refinement, power and glory, until her sons in every clime and land, burst forth with proud exclamations at the thought and name of their own New England. And all this can be done for our wider, broader, and more glorious West—if undue distrust, jealousy and preference, are not unnecessarily and wickedly spread among our people.

Gentlemen, I cannot but express my regret at the poisoned and dangerous sentiments which have been uttered in deliberate argument before you. I regret them the more, that they come from so distinguished a source; that they are not the fevered utterance of heated debate, but the studied embodiment of careful thought.

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Doubtless the speech of the eminent Counsel is to go far and wide through the land, and to attract the admiration of at least his peculiar followers. I take it for granted—I sincerely hope, that, ere it ushers forth in print, it will be stripped of some of its destructive spirit and doctrine.

What! are we, in this law-abiding and loyal State, to have it thundered in the ears of jurors, in the sanctity of a court-house, and in the course of judicial proceedings, from the lips of any man, that if a verdict is not satisfactory to the people, another "inquisition will be holden, and the victims of the law be dragged from the bloody fingers of power?" Do I overstate it? No—I know you recollect it. I saw and felt, and sympathized with you, in the shudder which marked your feelings as that and kindred sentences fell upon your astonished ears. I forgot I was here, and was carried for a moment to some heated tribune of Paris, where some spirit of fierceness was maddening the populace and stirring up France to again

"Get drunk with blood to vomit crime"

Ah! gentlemen, there is a worse evil abroad through this land, than the overshadowing power of Corporations. There are *isms* of dreadful and fearful import around us. They "menace our public institutions and private rights." There is a spirit of disloyalty to law and country; a tendency to forsake the old landmarks; to treat the lessons of sages which come down from our fathers, as antiquated and worn-out; to speak lightly of our hallowed Union; to abandon those pure, steadfast, and perpetual principles which have sanctified our past, and which can alone save our future; and to rear and plant in *their* stead a "*higher law*," which, each one for himself, may adjudge and administer.

Hence come, those frightful dangers which disturb our courts; that voice of evil omen which would fain chaunt the hymn of ruin over the broken fragments of our capitol; which would raise the arm of private judgment against the enactments of the law-makers; and rouse an excited populace to sit in judgment on the decisions of courts and the verdicts of juries.

Gentlemen, it is an evil day, when the men of our high places are found scattering such seed in congenial soil. Where, if such is to be the course of things, are we to stop? There would be an end of law, and confusion and ruin would stalk with fearful strides over our land. We enforce not the law here by the bayonet. It is the law of the people, administered by forms prescribed; and the beautiful sight is exhibited of the people of a whole empire bowing in silent respect and cheerful obedience to the adjudications of their own courts and the verdicts of their own juries. And well may we do so. For what would we be without that law and cheerful obedience to it? What and where would we be if a community, or any portion of it, could or dare rise up, in violence or lawlessness, and crush or disturb the solemn awards of legal tribunals? What and how shall we characterize the spirit which would invite us to such a dread feast?

Gentlemen, all you possess on earth, is the reward of labor protected by law. It is law alone which keeps all things in order—guards

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the sleep of infancy, the energy of manhood, and the weakness of age. It hovers over us by day; it keeps watch and ward over the slumbers of the night; it goes with us over the land, and guides and guards us through the trackless paths of the mighty waters. The high and the low, each are within its view, and beneath its ample folds. It protects beauty and virtue, punishes crime and wickedness, and vindicates right. Honor and life, and liberty and property, the wide world over, are its high objects. Stern, yet kind—pure, yet pitying—steadfast, immutable and just; it is the attribute of God on earth. It proceeds from his bosom, and encircles the world with its care and power and blessings. All honor and praise to those who administer it in purity, and who reverence its high behests.

When our own respected, eloquent, and classic citizen Senator, was desired to choose a motto and design for the coat of arms of that State, with which he is so identified, and by it so appreciated, most happy was he in that choice. We find it stamped, and reading, when rendered, thus: "If you seek a beautiful peninsula, look around you." And we see, as part of the design, the sun of civilization rising from the waters, and commerce and agriculture quickening into life beneath its genial rays. And the lone Indian is there too, standing in sadness, seeing the elements advancing and gathering which tell him the doom of his race, and before which he must again retreat to roam the western wilds.

And a beautiful peninsula it is! Its shores bathed and almost circled by the majestic lakes which now are convulsed with storm, and anon flash back the serene light of heaven, as if from a million of mirrors. Its prairies blooming with beauty, and uttering sweet whisperings to the light wind as it breathes among its flowers. Its fields yellow with luxuriant harvests. Its youth cultivated. Its people moral, contented and happy. And all reposing beneath the reign of law and order. But change the scene! Let law be disregarded, and her ministers brought to contempt—let confusion and disobedience characterize her people, and the clouds of darkness and disgrace will soon gather over our land. Frantic passion will produce ruthless violence; bad men will revel and rejoice; the good will sigh and depart. Better, than that this should come to pass, would it be that the forest and primeval silence should return again. But it is useless to anticipate such evil things. Such invocations to our people, fall on unwelcoming ears. They may suit some foreign district, some land where anti-rent and anti-law make part of her history; but cannot and will not corrupt the law-loving and law-respecting people of Michigan. He who expects to read on the columns of her greatness, words of disloyalty to the Union or disrespect to law, may seek for them in vain, until he himself sinks into the abyss of time.

I regret, gentlemen, to have thus to leave the strict merits of the case, to follow and comment on the extraneous, and to my judgment most dangerous, remarks of counsel; and will now return to what is more in point.

We are told, gentlemen, that this is not an indictment for conspiracy. There was little need to argue that point, as the prosecution

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have never asserted or pretended it was. The indictment is for arson; and the defendants now on trial are charged as accessories before the fact. The charge is simply this: that Gay burned the depot, and these defendants induced and procured him to do it. But, although not an indictment for conspiracy, it is for a crime resulting from conspiracy among the defendants; and wherever combination exists, the law relating to conspiracy is applicable, although the charge is not one of mere conspiracy. It has been so held in many cases. But I will trespass on your time only by reading one. [Here counsel read and commented on the case, The Commonwealth *vs.* Crowninshield, 10 Pick. 497.]

And, gentlemen, notwithstanding all the arguments and assertions of counsel, it is the law, that wherever combination exists, it is competent to give in evidence, not only the acts done, but also the words spoken by those who belong to the conspiracy, and which are within the scope of the combination.

In the case of the Queen *vs.* Murphey, 34 English C. L. R. p. 600, Justice Coleridge uses the following language:

"There are two general observations which I ought to make. The first observation is, that from the nature of this charge the evidence must necessarily grow up as the case proceeds. The acts of the one party must be given in evidence, and then the acts of the other, and it may then be shown that those acts fully prove a conspiracy between them. The other observation is, that my brother Bompas (quere Gov. Seward,) confounds *what is evidence to be heard*, with what is evidence to convict. It has been opened that these two defendants instigated a general resistance to the church-rates and that they published handbills on the 26th and 27th of October, and this was on the evening of the 27th; these handbills too were calculated to cause that which took place and added to this we find that when the party is brought before the Magistrate one of the defendants *assisted him in his defence* and *the other became his bail*. I cannot say that there is no evidence, that this act was instigated by the defendants."

Such acts and declarations being in evidence you are bound to consider them. You may deem them insufficient to convict on, but you cannot disgard them, you must allow them such weight as your best judgment dictates. And so we respectfully ask the court to charge you.

In this case the obstructions and other acts of aggression committed in Leoni, when taken in connection with the language used on all occasions by defendants, must have no slight influence on your minds; they must go *far* to point out these defendants as the nistigators of the particular crime charged in the indictment.

Let me give you an illustration. If these persons stood charged with the burning of this building; if it was proven that they had repeatedly threatened to destroy the property of its owner; that they had combined together to do him all the injury in their power; to assault him; to destroy his business; to steal his property, and failing in that, to burn his house, and the building is thereafter in fact

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fired, will not a suspicion amounting almost to the certainty of guilt fasten upon those who have thus threatened and conspired? will not the mind inquire who so likely to do it?

And how much stronger is the case before you where we find these defendants constantly assembling; breathing forth vengeance against this company; threatening to destroy its property; to obstruct its engines; to murder not only its employees but even unknown and innocent travellers who dare to patronize it; and as a last resort to *burn its depots.* When we find them for the space of two years, constantly acting under the spur of their diabolical hatred, and as I shall hereafter show you with community of action and design, carrying their vile threats into execution.

You will readily perceive gentlemen, how important it was to the prosecution to prove the obstructions and other acts of aggression committed by these defendants, in and about Leoni, and that they were the result of a combination between them. The defence has felt the weight and importance of this proof, and a strenuous effort has been made to convince you that there is no proof of a combination. It seems conceded in argument that some of these defendants committed some of these acts, but the counsel says each act was done on the impulse of the moment: was the individual act of the person doing it, and there was no concert, no agreement, no combination.

Now the prosecution contends that these acts were done by the defendants under a general combination and understanding amongst them to injure this road in every way, and to the greatest extent in their power.

This is an important branch of this case, and before entering on a detail of the evidence, I beg to read to you a few authorities showing how combination may be proved.

Starkie on evidence, vol. 2 No. 232 & 233, says:

"A convict may be proved by evidence of a concurrence of the acts of the defendant with those of the others convicted together by a correspondence in point of them, and in their manifest adaptation to effect the same object; such evidence is moee or less strong according to the average publicity or privacy of the object of concurrence; and according to the greater or less degree of similarity in the means and measures adopted by the parties, the more secret the one and the greater the coincidence in the other, the stronger is the evidence of the conspiracy."

"Where several combine together for the same illegal purpose each is the agent of all the rest, and any act done by one in furtherence of the unlawful design, is, in consideration of law the act of all. Thus you perceive, gentlemen, that if we find a similarity of action and a similarity of expressed motive in the purpetrators of these outrages; if we find that each act tended to accomplish the same object, that all, or nearly all these defendants were identified with these acts of aggression; that they were conversed of freely amongst them, and that the perpetrators of each act sought the first occasion to communicate their exploit to the rest of the defendants;

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the first of combinatien will be established beyond all dispute, to the full extent of all that can be embraced within its scope.

In citing testimony, I will refer to the printed report and I invite you and the counsel to follow me and at once correct me if I color or misrepresent it. I will also point out as I pass along, where and how the evidence has been misrepresented or suppressed by the learned counsel on the other side.

The counsel who preceded me, mentioned eleven assaults and menaces against the road, claiming that with not one of them was even one single defendant identified; and seventeen overt acts with none of which, he claimed, was any defendant identified, save Filley, Williams, and the two Prices. I will take up these twenty eight assaults and overt acts in the same order in which they were presented by him, and see if the testimony he has read, that which *he has not read*, will not lead us to a very different result; and then I will add to the list some ten or a dozen acts of aggression which *in his hurry* he omitted. He also claimed that even in the few instances where Filley, Williams and the Prices were identified, the acts resulted from impulse, were individual; and that there was no evidence of concort or combination.

1. The cars were stoned. Proved by Holmes, none of the defendants identified.

2. In June '49 the cars were stoned—one stone fell near a lady, another struck a gentleman on the breast and hurt him severely. Proved by Levi Easter.

3. Stones on another occasion were thrown by eight or ten persone from some bushes, at the cars. Proved by Caster.

The prosecution concedes that there is no evidence to directly identify any of the defendants with either these three acts, but here I must myke my first complaint against the candor of counsel inasmuch as he has altogether omitted the following important portion of Carters testimony found on page 76: "Have several times been obliged to stop and remove obstructions in that vicinity during the past two years; was baggage man on passenger train in '48. For a long time were obliged to run a hand car ahead of the passenger train, and have three times got off in one night to remove obstructions, such as rails, old ties, strap iron, &c; the passenger train had to run very slow; this was between Grass Lake and Jackson; during '49 have known the track to be obstructed as often as a dozen times." This is certainly proof of other obstructions no where named in the counsels list.

Wescott speaking of Fitch at page 80, says:

"In march 1850, he told me what had been done in '49; said the boys placed obstructions on the track; the way they did it was by being secreted in the timbered land between the Centre and Jackson; after the hand car passed they would rush out and place things on the track, before the passenger train come up; also said they would place pieces of strap iron between the joints of the T. rail and cover them with bushes and branches of catnip."

Charles Rogers, at pages 116 & 117, says of Filley: "I work-

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ed for Filley and Fitch in harvest '49; near Filley's house on the road heard him speak of throwing the cars off; it was in fall of '49; they were running a hand car ahead of the train; said a stick of timber could be placed on the culvert so as to lean off the track while the hand car passed, but by means of a rope attached to the lower end, a person at a distance could pull it so as to bring the timber in connection with the train."

and of Fitch he says:

"Heard him speaking of a grand invention for throwing the cars off; either said there had been or might be a machine by which the cars could be thrown off, and the machine saved for another time: said in the noise and confusion of the cars being thrown off, the machine could be taken away."

I think gentlemen, the testimony of these four witnesses, shows conclusively, that, in '49, the cars were frequently obstructed, and that Fitch and Filley, if not others of defendants, were either the actual aggressors or the instigators—not acting from impulse either, but deliberately devising subtle means to frustrate the protection afforded by running hand cars. From Rogers we learn they *devised* the means. From Carter that their object *was accomplished*; and from Wescott, that Fitch confessed his participations.

4. The cars were stoned. John H. Dexter at page 100 says:

"The night previous to the suit, the cars were stoned. I had just gone to bed and heard the glass jingle; went down and told Filley somebody had thrown glass into the parlor window; he said he guessed not; went and looked but found no glass broken; it was while the cars were passing; found Fitch, Filley and two or three others out of doors. The Price boys were about before I went to bed. I afterwards saw glass on the railroad track, six or eight rods from where they stood; afterwards, saw two piles of stones in Filley's orchard, about the right size to throw."

So much of the testimony, the counsel read and claimed: no defendant was implicated; he overlooked the following evidence of H. C. Dexter, on page 106.

"I was at Filley's the night the cars were stoned. I was standing near and heard a stone hit the cars; Price, Corwin, Eitch and Filley were there; saw Filley have a bottle in his hand, and swinging it as the cars passed, at the time the glass windows in the cars jingled from stones thrown. It was a passenger train going west."

This last testimony was too much for the counsel; he was afraid of *the bottle* and wisely omitted it, but now that you have it, gentlemen, how will you avoid the conclusion, that Filley, who swung the bottle and those who stood beside him and who, in other portions of the testimony are found threatening to do such deeds, were the perpetrators of this *overt* act. You perceive gentlemen, how important it is to have the *entire* testimony as to each act.

5. Three stonings of the cars which are afterwards mentioned in the testimony of Woliver—proved by Clark. Here also, the counsel omitted to state that Wm. Clark proved he met many obstructions in '49, generally between Fitch's and Filley's—that they had to run

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hand cars there, but always thonght themselves safe *when they passed Leoni,* and so it is through the entire case: witness after witness fixes the conviction in our minds that every act of aggression originated amid the peaceful hamlets of Leoni.

6. Menaces by unknown persons, proved by Cochran and Sherman—tis true these men are not identified, but they come from Filley's—however, we do not claim there is any identification, so I pass to No.

7. Five shots fired at the engine house, proved by Clark. I pass this for the present, but will, when I reach No. 27, show you that many of the defendants are identified with it.

8. A slight obstruction which was carried off by the broom. With this we claim no identification.

9. Wescott, at page 88, says:

"I heard Fitch say when a mail car was burnt up, that the Co. lost $12,000, and a woman lost $4,000; Filley said the Co. after getting a few more such slaps would begin to think *there was a God in Israel.*"

There is something in the form of expression used that indicates knowledge, but I have a long list to go through, and will concede that, even in this case, there is no proof against defendants.

10. Caswell proves a hand car was broken and that Filley said "the man who broke it knew who did it, he probably lives nearest to it." You will remember that *it is* in proof that Filley lived *nearest*, and had before threatened that the hand car should be broken every night. Evidence, gentlemen, which comes very close upon direct proof, though we do not claim any identified with it, save Filley.

11. Smith and Marsh prove the placing of a piece of flat iron on the track by defendant Tyrrell. We concede there is no direct proof implicating any other defendant with this act, but I must dissent from the proposition that this was a harmless act, that could work no injury. If the learned counsel lived in our state, and was in the habit of riding over the road, he would be far from regarding the placing of pieces of iron on the track as an *innocent* amusement.

12. Knox and Van Valen proved some acts of Doctor Farnham's near Marshall; there can be no doubt of the truthfulness of these witnesses, but the acts seem so foolish that there is fair reason to question if the witnesses may not have been mistaken as to the real character of the transaction.

13. The testimony relating to this overt act was thus given to you by the learned counsel from *his abstract*:

"The prosecution dwell upon the burning of a culvert, east of Filley's house, in June, '51, proved by W. B. Stanton. He says that he was at Filley's, "that Mrs. Filley came in and gave the alarm that the culvert was on fire. Stanton and Fitch went up to see it. Stanton proposed to get water and put out the fire. Fitch, with his usual smile, (for he was always pleasant to me,) answered, 'you will have to go out of this town to find anybody to put it out.' "

I must ask you to compare this with the true testimony on page 99.

True, there is not much difference in *words,* but it is an apt illustra-

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tion of the use the learned counsel can make of a smile *properly placed.* The counsel passes this point lightly; the testimony seems scarce worth his notice. It was but a smiling allusion, by Fitch, to the tone of public feeling. Do you think so, gentlemen? How came Mr. Fitch to be so well assured of the sentiments of his neighbors, these defendants? One of the most essential ingredients of combination is mutual understanding, and we find it fully developed here. Fitch can speak, not only for himself, but for all Leoni. This was no trivial affair. Even though Fitch's lips were wreathed with his "usual smile," this was no smiling matter. It was a daring outrage, and were it not for the warning given to Spaulding by Stanton, it would have been a fearful and calamitous one. Yet, knowing that the train was rushing on with hot speed, and hundreds of unsuspecting passengers—knowing that if it came unwarned a fearful destruction of property and life must ensue, Mr. Fitch not only would not help himself, but he could smilingly speak with certainty for his friends and neighbors that they too would decline. How far removed from a murderer is the man who, by the lifting of his arm, can save the lives of hundreds, yet "looks calmly on, smiles and sees them perish!" Here the counsel, who last addressed you, took occasion, *en passant*, to quietly state that it was very clear that Phelps and Lake made this burning the basis of a perjury, but are detected, as by mistake they fix the burning in February, '51, when it occurred in June '50. The *argument* is perfect, but *the facts* are *assumed.* There were two culverts burned. Phelps and Lake spoke of a culvert burned in '51, Stanton of one burned in '49, and there is not a particle of proof to indicate that they meant to refer to the same transaction.

14. The testimony of the two Dexters who prove a wood pile was burned near the Centre, that shortly before the alarm they heard a person come in barefooted and pass stealthily towards Filley's room; that Filley would not go to the fire as he feared spies would see him; and of Hudson who found two foot prints near the fire, one of which he thinks was Filley's, and who says that when he accused Filley of the deed, instead of denying it he replied, "there should be no fence built till they settled for his lands"—bring this act so home, that counsel concedes Filly may have done it, but claims it was his own solitary act. He forgets, I believe he did not state to you, that Hudson found the foot prints of two persons—so that it was not the act of Filley alone—he had some accomplice.

15 Woliver proves that he and Corwin took a spindle from Fitch's and placed it in the frog to run off the train, and that the next morning Fitch said, "you must not take anything from my house or they will suspect me. Take anything else you can find, but nothing from my house." Counsel claims that no person was identified with this but Corwin; that Fitch had no part in it, no knowledge of it, till after it was done. You will not fail to ask if Fitch's language was that of encouragement or reproof? and whether the immediate information possessed by Fitch does not evidence a general understanding to commit and encourage depredations?

16 Clark proves that in October 1850, the engine Rocket was thrown

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off. Sherman proved that in speaking of it, Corwin said, "*we* did it." Yet counsel claims this was the sole act of Corwin; it is true there is no explanation given of who was meant by "we," but it meant some persons. Corwin had some accomplices—who were they? Who were his constant associates? Who day after day joined him in threats against this road and pledged themselves to *like* unholy deeds? The counsel overlooked the testimony of Purcill on pages 123 and 4: "I was at the Centre when the locomotive Rocket was run off last of August or 1st of September, about 9 P. M.; saw Corwin there with two others; twenty or twenty five minutes before the train came along; Corwin said they had been to a husking bee; but did not think he should go again in the open field; it was a pretty cold night; they asked Filley to treat, which he did; a short time after Grant came in and said the passenger train had run off on the east switch. Holden, who was with me, said let's go to the train and they commenced talking privately together; this was in Filley's bar-room; they were talking privately when Grant came in. In reply to Holden, they said they would be along soon; but they did not come; we went back and found them at Filley's." It is conceded Corwin did it, and we find him and his accomplices rushing straight from their work to Filley's to be treated and to have a private talk. There is no crime in treating, no crime in speaking privately; but can you, in the face of this testimony, come to any conclusion but that Corwin and the others did the deed, and that Filley was privy to it? Why did not these men go down to the engine with Holden and Stanton? If innocent, was it not natural they should do so? Gentlemen, the murderer shrinks from the presence of his cold and lifeless victim, and these men, not yet informed of the consequences of their fearful deed, might well turn from the spot that, for ought they knew, was steeped with blood, that cried out to heaven for vengeance against them.

17. An attempt to detach freight trains, and stone the conductors, proved by Carter and Sherman. Corwin is the only defendant who made the attempt, but by referring to the testimony of Woliver, on page 55, you will find that other outrages was contemplated, that night, and were abandoned because of the presence of two strangers at the tavern, supposed to be *spies*, that a number of defendants were round the tavern, that night and that Filley and Champlin in particular were active in learning whether these strangers were spies,—a clear indication that they at least were privy to the intended operations—else why should they interest themselves as to the spies? If they were privy to any baffled design they are accountable for any substituted one, having the same object.

18. Woliver proves that in September '50 he and Filley turned a rail near the dry marsh. The learned counsel read you the testimony of Woliver, and no more and complacently assured you that there was no evidence of concert—like all the rest it was an individual unpremeditated act—no concert—no privity with others. I will read some other portions of testimony to you. By referring to the testimony of Brown, page 79 and 80—you will find that he saw con-

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cealed under Filley's barn, tools for tearing up the track: that Filley once told him he had such tools—and that subsequently he found the same, or exactly similar ones, concealed under Filley's fence near the marsh (the place where this outrage was committed.) On page 55, you will find that when Corwin wanted Sherman to turn a switch, he said, "he would go and see Filley and find where the *iron bars* were for the operation." And at page 57 you find E. Price saying "he had made a couple of *bars* to take up the track." Yet the eminent counsel tells you there is no proof of concert—no common design. Truly gentlemen, if the most important portion of the testimony is to be suppressed, we may seek in vain for evidence of combination, but read the entire—read it fairly; and you find "*combination*" stamped on every page. Is there not combination and preconcert here? Price made the tools—Filley had possession of them; but they were common property; when Corwin or any other accomplice needed them, he had but to ask and they were given. But each act you are told, is the result of the impulse of the moment. Tools are prepared—plans are laid months before hand, that all may be ready when a favorable moment presents itself; and because the hour, and day, and moment of opportunity cannot be foretold, but are promptly seized on when they come, there is no forethought, no preconcert. No concert—when we find men doing the same deeds—using the same tools, breathing the same threats, and aiming at the same end! I have read you the law on this point and you will not be imposed on by sophistry.

19. The counsel tells you, Woliver proves he and Filley placed a tie in the culvert, so it broke the lamp; that Fitch speaking of it next day, said he had gone up and while the engineers were engaged revised the breaks, and that it otherwise appears Fitch got home about the time the accident happened; and as usual says this was the sole act of Filley—no one else privy.

Allow me gent'emen to read you the *balance* of the testimony on this point, not read by counsel; there are more privies than the counsel mentioned, and the proof does not rest on Woliver alone, though I will show you hereafter that he is worthy of trust and credit. Dixson page 72 says:

"Heard Fitch say he went up to where the cars stopped; think he said he and Lemn went up, but am not positive; he said Lemn had said he took a large jack-knife with him, and slipped it up into his coat sleeve, as he did not know but he might have occasion to use it; the obstruction was old ties."

At page 82 Wescott says of Fitch:

"He said they had a 'fuss, the night before, near his house; an engine was obstructed, and said they laid it to me, and said 'd—n 'em, they laid it to me, but I told them I did not get home;' we walked up to the spot, and he explained how the timbers were placed, to break the lamp, which he said must have cost $100. Before I saw Fitch, Hay told me of the accident; heard that Lemn came home with Filley, and staid with him." "Williams has also told me that Fitch put on the brakes, and laughed at it as a joke."

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Wells at page 60 says: "Another time heard Fitch, Filley and Eb. Price talk of a plan to place a rail in the track to strike the lamp; a few days afterwards heard Fitch say such a thing had happened toward Leoni; this was after he suggested the plan."

John H. Dexter page 100 says: "Heard Corwin, Fitch and Filley speak of obstructions on the track west of Fitch's; they said it was a pity the engine did not run off and smash the whole train. One of them, I forget which, said the stick was pointed, and placed so as to break the lamp."

Yet you are told with very assumption of candor, that this was the sole act of Filley,—there was no forethought—no concert—yet we find no less than five of the defendants privy to it, and three of them devising the *modus operandi*, long before-hand. How chanced it that all this important testimony was omitted by the counsel who assumed to give the entire?

20, 21, 22 and 23. Are the four cases of stoneing the cars testified to by Woliver. He states the first was was done by himself, Price, Champlin and Davis; the 2d and 3d by himself, two Prices and Corwin; and the last by himself, Filley, Corwin and Williams. The testimony on this point was fairly enough presented, save that counsel omitted to state that Sutton on page 108, heard Barrett speak with Woliver about the cars being stoned by him Woliver. But the counsel with a solemn countenance, claimed that there was no evidence of concert—that each act was the individual act of those doing it. How absurd—whenever these men meet on business or pleasure, whenever opportunity offers, they stone the cars; they are always ready—no inducement is necessary; all of them who chance to be present join in the act—yet because they do not meet, resolve, seperate, and agree to meet again before doing it, there is no concert!

24. The engine Goliah was thrown off the track at Leoni. Sherman proves Corwin said "they did it;" and Bingham page 108 proves that he that night was passed by Corwin and Williams in a buggy, speaking of the cars and fearing that "would be too late;" they were going towards where the accident happened, and before it happened that he recognized their voices, that Corwin spoke in a *feigned* voice. There can be no doubt from this testimony, but that Williams was one of the persons comprised in those mentioned by Corwin to Sherman.

25. A wood pile was burned near the Centre. The testimony as to this act has been fairly stated to you. It is briefly this:—you will find it on page thirty—On the way from Jackson, Corwin proposed to burn the wood; when they got to the Centre Price agreed to go with them; they stopped at Filley's; they said they were going fishing; Filley gave them an axe; Price said he hadn't the first d——d thing to fight with in case of trouble; Filley gave him a knife; wished them luck, and told them where they could get whiskey on their return. Although Corwin, Price and Woliver were the ones who burned the wood, from this testimony, gentlemen, you can have little doubt in concluding that Filley was cognizant of their designs. He knew they anticipated a fight and trouble. Neither can you

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have much trouble in disposing of the sophistry which termed it an impulsive act: for Corwin meditated on it all the way from Jackson; and Price, unless his mind was already prepared, would not so readily have entered on a deed that, in case of detection, would expose him to fearful punishment.

26. The Gazelle was thrown off. Woliver proves that it was done by himself, Filley and the two Prices. This overt act was the subject of a long discussion; the counsel contended that only three of defendants are in any way identified. As the prosecution are of a very different opinion, and regard the testimony bearing on it as pregnant with evidence of combination, I must refer you again, and fully to it.

The witness Taylor proves he found under the culvert, when the accident occured, a paper produced in the following words:

"Michigan Centre, Aug. 19, 1850.

MR. PRICE,—Sir:—I want you to be at the mild stake, this side Leoni, on Monday night, at about half past 9 o'clock. We intend to run the cars somewheare's about there; be sure and be there at the time.

By order of the Committee, W. CHAMPLAIN."

The learned counsel has told you, this was read upon the witness Holmes expressing an opinion that it was in Champlin's hand, but that on being recalled, Holmes retracted that opinion — said he thought it was not the writing of Champlin, but thought it more resembled the hand writing of Taylor. I read to you, gentlemen, from the re-examination of Holmes, and you will see whether he does retract his first opinion:

"The W. is not in the form generally made by Champlin: also I have never seen his signature other than Wm. W. Champlin: also he generally spells his name Cham-*plin*, and the signature to this letter is Cham-*plain*. I have an account in my possession in the hand writing of Mr. Taylor. Saw Taylor once write in a book: think I know his writing, and that it has more marks of his hand than of Champlin's.

Cross-ex'd. I spoke of this matter with Frink at the R. R. hotel. Was brought in to be a witness by defendants. Also spoke with Champlin himself, and he said it was not his hand writing; this was about two weeks ago. May have talked with Higby about it, think I did: at Michigan Centre learned he did not make his signature in that way, by seeing some of his writing: he also told me since I was sworn that he did not spell his name in that way: the old man also showed me his copy book where it is spelled different. Still think the form of the letters are the same as his hand writing, and still it would strike me as his hand. Never saw Taylor write but once; then he wrote a number of names of those who were boarding with me. Don't say it is Taylor's hand; the W. is formed like Taylor's, but the other letters are not."

Thss, gentlemen, is called retracting his evidence, and it is with a vengeance. It amounts simply to this, after undergoing a severe tutelage with professors Frink, Higby, and Champlin, the witness

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persuaded himself that the "W" differed some from the usual "W" of Champlin; but all the tutelage cannot prevent him still saying, "it would still strike me as his hand." "Don't say it is Taylor's hand." Tolerable strong proof, gentlemen, from a tutored and unwilling witness.

I will not refer to the other witnesses on this point, as the counsel himself seemed to value their evidence as little worth. Wescott you will remember, proves that Fitch, speaking of thisa ct, said, "the Gazelle got dry and ran down to the marsh for a drink." Act. page 83 and 84. Wescott further says:

"A. M. Sackrider brought up a load, nearly all strangers to me; that day heard conversation between Williams and Filley; W. asked F. for money, and F. replied, "I thought that this Gazelle matter was all settled;" W. replied he thought there was something due him yet; Filley said to him, Fitch had paid him $10, and he (Filley) had paid him $12, and wanted to know how much more he claimed in the Gazelle matter. W. said he would leave it to Filley, and F. asked him if $3 would be enough; he said he supposed it would; at this time Sackrider called them in to get drink, they were in the yard and I was around the corner of the house six or eight feet from them when I heard the conversation; I went into the bar-room then and sat down; they came in, and Filley asked me to chance a five dollar bill, which I did, and he gave Williams three dollars.

Mr. Sackrider, on page 99, says:

"I saw Filley hand Williams a bill which he told him was a three dollar bill; just before that I saw them out doors talking; at the same time I saw Wescott standing very still around the corner, about six feet from them; I called Filley in for something to drink; said he would be in soon, Wescott came in and set down; about five minutes after I called Filley again, and he and Williams came in; Filley asked me to change a five dollar bill; I told him I was "dead broke;" he then asked Wescott, and he changed the bill for him, and Filley handed Williams $3, and asked him if that would make it straight."

Wells also testifies to the payment of the $3. Stronger corroboration could not well be conceived. And how is it sought to be got rid of? Not by the testimony of Crowell who gave such an improbable version of the occurrence, the counsel wisely abstained from all allusion to him—although there was no doubt that the $3 was the amount paid, Crowell forgot the figure, and while he heard the accounts settled, and the items borrowed money, &c., specified, he was sure the ballance to be paid was $2. But the counsel says the prosecution witnesses all disagree. I deem that these very differences inherent evidence of truth. I will read them to you. Phelps, at page 128, narrating a conversation between himself, Williams, Price, Freeland, and Corwin, says:

"Williams—said you know I was the means of throwing off the cars west of Leoni, though I was at home and abed, and we can lay it on to Laycock and swear it on to him."

You will remember that this was not addressed to Phelps, but to

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others who were fully familiar with the entire occurrence. To them it would be quite intelligible, though to others involved and obscure. When Lake testifies, he says, at page 161.

"Williams said Corwin, Filley, Woliver, and two Prices were down there; and he furnished them with a bar to go and tear up the track, and he went home and went to bed, so he could be a witness for them if necessary, and swear that they were all at his house."

Here you will remember that Williams was explaining to Lake, who till then was ignorant. How natural the variation! How like truth! A hint did for the others, but to merely say he "was abed" would explain little to a stranger; he had to tell why he was abed.

The learned counsel omitted the testimony of Mr. Henry, who says, p. 98. "Heard Williams speak of the switch being turned, but said they could not lay it to him as he was abed." Why should Williams expect they would lay it to him? Gentlemen, "a guilty conscience needs no accuser;" and how ready the defence of this self accused sprung to his lip—he was abed. He had laid his plans, he was prepared for them there; he knew he could prove it. But the counsel says the witnesses implicate *different* def'ts. What of that? We do not assume that any one witness knows all—different portions come from different sources, and so coming and agreeing, they are the more entitled to credence. If, as the defence assumes, this was a got up story, the witnesses would agree in every material point; they would implicate the same men; their not doing so is evidence of the absence of collusion and helps to establish, what we firmly believe, that almost every def't was cognizant of and implicated in every aggression.

27. This, the last act referred to by the eminent counsel, relates to Fitch giving pistols to Wells, Laycock and Casswell, to shoot at the engine house. I will not follow the learned gentleman through the ingenious sophistry by which he sought to get rid of this fatal piece of testimony.

Here, as in other instances, you will find that there is in the pages in your hands, strong, direct and corroborative testimony, proving not only that Fitch did give the pistols that night, but that shooting at engineers was an old, long pursued, and favorite pastime to many of these defendants.

Caswell and Wells prove that Fitch gave them pistols to shoot at the engine house. D. J. Holden, p. 172, says:

"Heard the report that Fitch had hired some one to burn the depot in Detroit, and that he handed certain pistols out of the window to Wells or Laycock, to shoot the cars; asked him about it; he told me he did hand the pistols out of the window to them, mentioning either Wells or Laycock, or both, but either said they were not loaded or that they were only loaded with powder, and that he handed them out for them to fire at the cars merely, to frighten the engineer and alarm the road."

Can anything be more direct and positive than this? A plain, positive admission of all that is material in this cause for the point is

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not now to prove intent to murder, but to show that shots were fired with intent to so alarm engineers and frighten passengers, that this company, would be compelled to abandon its business. Again, B. Culver and Mrs. Hargrave prove that Laycock admitted to the same effect. Mr. Huntington, a witness omitted by the counsel, p. 78, says:

"I know Minor Laycock; heard him say he went to Fitch and asked for guns, and Fitch asked him what he wanted of them; he told him he wanted to shoot the cars. I told him I thought he would get into trouble, and he said there was no danger as there was no shooting that time, but said there was afterwards."

Does the testimony of Wells or Caswell go farther than this? Not so far, for here we have it by a witness of high character, that, although, the design of shooting at the cars was not carried out that night, *it was* subsequently. Again, Mr. English, another witness overlooked by the counsel, says, at p. 121:

"I know Fitch; worked for him in 1849; one day, at his house, he said he had laid a plan to fix the road, so that the company would not be able to hire an engineer within one year from that time to run the road; asked him why; he said because they would be afraid of their lives; he also said, "If they knew when Brooks was coming over the road, he never would be able to get through to the end of the rout."

You perceive, gentlemen, this shooting at engineers was not the impulse of a moment in 1850; it was an old and well matured plan. Again, Mr. Henry, another witness overlooked by the counsel, at p. 98, says:

"I remember whenguns were fired at the cars in 1849; I heard the cars pass, and heard the guns in the direction of the cars; there were four or six reports; think it was in the last of May or first of June 1849, 9 or 10 P. M.; I saw Corwin next morning and talked about the firing of the guns; asked him if they were firing at the train last night, and he said, "yes, I suppose so;" I asked him if anybody was killed, and he answered "no;" I said bye and bye they will kill somebody; he replied, d—n 'em if they don't want to be shot let 'em pay for the cattle they have killed; I told him that was a bad idea, and they would kill innocent people who paid their money for riding over the road; he said 'd—n 'em they need not ride over the road if they don't want to be killed.'"

Thus you see, that even in '49, Fitch was not the only one who was identified with this practice of shooting at Engineers. How readily Corwin knew that the shots were fired at the cars, and how freely the threat of killing and shooting flowed from his lips! What difference does it make then, whether Wells is true or false? He is true in this at least, for all he proves, and more too, is proven by witnesses against whom counsel dare not hazard a breath of suspicion.

Counsel has dwelt much upon the testimony of *Amanda Fitch.* The counsel feels no more kindly to her than I do. I would not hurt that child for a thousand worlds. I sincerely wish she may

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never have to fill a witness' box again; and hope, the present cloud passing from her young brow, her future may be one of cloudless brightness. But what is her testimony, gentlemen? It is the strongest corroboration of the evidence adduced by the prosecution. She says that Wells and Lacock came to the window; asked Fitch for his pistols, and also for some paper: that Fitch gave them, without asking what they were for, or uttering a single word. A tale, gentlemen, the truth, of which I need not question; as it is utterly inconsistent with any other hypothesis, than that there was pre-arrangement between the parties to come there for the pistols. If the prosecution had known that she would give such testimony, the unpleasantness of obliging her to testify against her friends, could scarce have excused them from placing her on the stand. I do not now stop to answer the charges of perjury, made against Wells: they are easily answered; but why do it, when he is only one among the many who prove this fatal point? You will remember these pistols were favorite dragoon pistols of Fitch; that Amanda says he never loaned them before; and yet, that he loaned them to a rude boy, in the dark of the evening, without a single word of enquiry!

I have now, gentlemen, gone through with each act mentioned in the list which purported to give all that were in proof; and you cannot fail to perceive what an entirely different character they assume, and how many more are identified with them, when the entire testimony is read, and read from the full report, instead of carefully prepared abstracts. I will now proceed to add to the list some *ten* others, important ones, too, which have escaped the attention of counsel, or at least have not been placed in this connection, where alone they can have their just force and strength.

28.—Mr. Spaulding, p. 67, says: "I remember the time when the locomotive "Dexter" was run off east of Mich. Centre, on the dry marsh, some eighty rods east of the Centre; it was in June, 1849; myself, Otis Kingsbury, and J. M. Hewitt were on the locomotive; it was drawing a train of racks, loaded with R. R. timber, going west, in the P. M.; we were running on the passenger trains time. After we got to Leoni, we run very slow for a while, and then increased the speed to get out of the way of the passenger train which was expected; I discovered a stick of timber ahead, but could not stop the train; we struck the obstruction, and it was cut in two, and did not throw off the train; I stopped the train after running some forty rods, the other two men jumped off before we struck the timber."

The witness goes on to state, that when the engine was stopped, Fitch, Filley, and some others came up. I will not detain you by reading the entire of this evidence, as it is lengthy, but ask your attention to the following portions: "Fitch said, "Spaulding, what's the trouble?" I think I told him some d——d hyena had put a timber on the track, but we had not run over it. Fitch said "Spaulding, by God, the Company never can run this road in safety, until they come out and pay us our price for killing cattle and damages done to other property." I said I could not see why the obstruction was placed, at that time, unless it was intended to catch a passenger train,

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as they did not know this train was coming; there were some remarks made like this—"probably the men who put it there, knew their business." I said if it had got to that pass, that we could not do our business on the road, I, for one, was ready to come out and defend the road with arms, if necessary. Fitch said if that was it, they might come on; he had at his house two double barreled guns and some pistols loaded, ready for business, and they had men enough to use them."

I will not detain you longer, by reading the description given of the dry marsh. You cannot have forgotten it—your blood like mine must have chilled, as you heard that witness detail that it was thro' God's Providence alone that the engine was not flung into the terrible abyss; that if the passenger train had come along first, its more rapid speed would infallibly have turned it from its course, and dashed it down deep into that slime, through which shafts have been sunk with ease over fifty feet without finding its bottom.

But the counsel will ask, where is the evidence to convict Fitch and Filley with this offense? I answer, you find it in their expressions to that gray haired man, as he stood on the occasion trembling and breathless—"Spaulding, by God, the Company can never run this road in safety, till they pay *us*."—"Probably those who put it (the obstruction) there knew their business." Is this, gentlemen, the language that would at such a time flow from hearts of men "who had never violated any law of their country?" The picture presented, was terrible, and needs no gloomy coloring. The catastrophy which a kind Providence had averted, was fearful, even to contemplate. Fancy that doomed train approaching, with its precious freight—families returning from long and painful absence—visions of home and happiness flashing before them; on they rush, unconscious of the fate prepared for them; there is a sudden stop—one mighty bound of the engine—one shrill whistle—one wild scream, and all is over. They are sunk, entombed—not in the beautiful cemeteries where mourning friends may weep over their ashes—not even in the bright, clear waters of our lake; but amid the slime and mud that ages have accumulated in that dismal spot. Of a truth, gentlemen, these men might say, they "knew their business," for they had learned it fearfully and well. Such was the fearful picture presented to their minds. It was one calculated to shake the firmest nerve—to appal the stoutest heart; but it shook, it appalled not them; their minds had brooded over it; familiarity had robbed it of its terrors, and it only called up the old motto of their hearts and mouths—"by God, the Company can never run their road, till they pay for our cattle." Their actions, their language, their demeanor, were all those of guilt. I confess, gentlemen, that if this fearful deed was shown by any ordinary evidence, my mind would be loth to receive it. It would seem too fearful, too improbable; but it *was* done—some one did it—the only question is, who? And who so likely as those who often threatened to do it?—who, in that fearful hour gloated over it?—and even amidst the kind manifestations of Providence, yelled forth their demon threats? But this is not all.

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Spaulding further says: "The same time I found other obstructions on the track near Filley's house; they were old strap rails driven into the joints of the rails. They were placed in along for 60 rods, some right opposite Filley's house and Fitch's garden. There was generally a bush thrown before the obstruction to cover or hide it from us; once found a dead calf drawn on the track—the obstructions were well calculated to throw a train off—some of them were within 30 feet of Fitch's house—the track within 20 or 30 feet of Fitch and Filley's houses, any one coming out from Fitch's, towards where the men were when they came to the engine, must have passed right over and among these obstructions on the track."

29.—Sherman, at p. 55, narrating a conversation between himself, the two Prices and E. Champlin, says: "Price told of a plan laid for Wescott; said Wescott had been in the habit of coming to the Centre and playing cards; the plan was to place a seat so that Wescott would sit at the window, and they would stone him through the window from the outside; those inside, at a signal, were to blow out the lights and jump away, when they were to smash Wescott's head with stones from the outside; this was told in presence of Champlin and the other Price; said they knew he was a spy, and he ought to be killed; this was the plan they had laid, and said if he had come again, they would have killed him. I spoke to Wescott, and warned him. Had also heard Corwin threaten to shoot Wescott, if he had come down at night."

Wells also proves that he heard of the same plan.

Wescott, at p. 88, says: "I heard of a plot to assassinate me at the Centre; I went to the Centre to find out what was going on; I crawled through a hole under the bar-room floor; it was in the evening, in Nov., and the Price boys, Wm Corwin and Credit, were in the room. I remained under the floor a short time, and Fitch came in; I heard the Price boys say they were d——d fools for letting me slip through their fingers; that I was the only man that could injure them, and that they had made d——d fools of themselves in confiding so much to me, and I must be laid out. They spoke of a former plan which failed; and said among themselves there must have been a traitor in the camp, or I would have taken the seat they designed for me.

"I had on a certain occasion been invited in the morning to come down in the evening and play a game of eucher; I went down and found Jack Freeland, Corwin, Prices, two Champlins, Barrett and N. Credit—Filley came in, and said every thing was ready to play eucher in the other room, and invited me to go in; and wanted me to take the seat next the window, looking out on the stoop. I did not do so, as I had been apprised that if I did, my life would be in danger."

And in the face of such testimony as this, we are asked where is the proof of combination among these defendants?

30.—Wescott proves that one night he was chased through a creek. Wells proves that he heard Filley tell Fitch he chased a spy through the creek, the same night. And Sherman, p. 54, says E. Champlin told him of it.

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31. In May, 1850, a stick was placed in a culvert so as to strike the cars: this was in the evening and a different occasion from that already refered to. Freeland admitted that he saw it but passed on lest should be laid to him—proved by Spaulding.

32, At page 88, Wescott says:

"I remember once when Fitch predicted the cars would be detained; I came down in the morning to take the cars for Detroit, and Fitch said I need not look for the cars until the sun got over past the meridian; they were then due from the west; it was soon after sunrise in the morning. He said it in reply to my remark that the cars were rather behind their time, the cars did not come along that day until near 6 o'clock P. M.; it was the day the cars were run off at Galesburg, and that caused the delay."

The counsel was wise not to present this testimony in any appropriate connection, for even his sophistry could scarcely explain away the miraculous manner in which Fitch could foretell so improbable a thing, as that the cars due at sun rise, should not come till evening. Clearer proof of a guilty foreknowledge of that outrage could not be adduced.

33. Lake proves that in March Doct. Farnham told him Fitch had hired Mount and Ackerson to burn the depot at Jackson, and that Williams told him the same, and that Mount and Ackerson also told him they were to do so. Caleb Loud at page 74, states he met Corwin in the same month, and says:

"We were riding round the sheds by the Depot at Jackson when I remarked that a fire there would sweep the whole lower town. He put his hand on my arm and said, "Just remember my word, there will be one here before long."

Is there no evidence of concert here? Mount and Ackerson are employed to burn: how does Corwin know there will be a fire there soon? Is it not here and in every instance, manifest that whoever might do the deeds, all were privy to it, aiding and encouraging?

Wescott at page 86 says: Fitch spoke of the burning of Depots as part of their plans, and that Filley once "spoke of burning the depot at Jackson; proposed to Corwin to burn it; said he had been by it and saw a good many shavings there which would make the work easy." At page 35 McMichael speaking of his interview with Corwin in Sept 1850, says:

"He wanted I should go in with him and help to tear up the railroad track; he also wanted I should help him to set fire to the depot of the railroad at Jackson; he said we should be well paid for doing it; he said Fitch would pay us; he said he wanted to injure the Co. all he could, that they run over cattle and would not pay for them;"

The enrire truth of this witness is established by Morgan Wescott page 118, who overheard the conversation by chance, and corroborates every particle of the testimony. Entirely unimpeached witnerses, men against whom not a word had been said even by counsel, proved every material point. We have the burning of depots fully established as one of the many designs of the defendants both before and after the fire in Detroit.

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34. This is one of the most remarkable of all the designs of the defendants indicating as you will perceive, combination, perseverance and scientific skill. Brown, at page 39, says:

"Heard Jack Freeland once say there could be a plan fixed to blow the cars up; this was when he was dropping in clover seed on Filley's hill. Joseph Wells and I were together when he said so. It was thus: To conceal powder so fixed that it would explode when the cars run over it; he said this was a plan talked of, and that it could be done at the dry marsh; he said he knew it would work, and when they passed there tt would blow them off the track."

and Charles Rogers page 117, says:

"Heard Fitch talking of the cars; he said by placing a keg of powder under the track, and having a trail of powder to the track, it could be fired by means of percussion matches under the rail; said he would like to see it done; have heard him speak of damages by the road in killing cattle, in justification for the depredations."

Wells testifies to the same conversation as Brown, and Caswell says he heard Fitch speak of it. You will bear in mind that this testimony, refered to early in 1850, Freeland had but a crude idea of it; he contemplated the effect, but had little notion of the means. Fitch, more intelligent, improved somewhat on the idea, he thought of percussion caps, but still, that was far from the best and most certain means of causing the explosion. We next hear of this scheme by Phelps and Lake, who say Doctor Farnham showed them a machine for blowing up the cars; that Fitch spoke of it to them; they described the construction with three tin tubes, and state that the Doctor told them he had some trouble before he could make an explosive composition to suit him for it, but had at length succeeded. Now, then, we have Freeland's crude idea, at length brought to perfection. It has received the finishing touch and is now prepared to murder on scientific principles. But the counsel will say, *that* is the testimony of Phelps and Lake. I promise that at the proper time I will show you conclusively that Phelps and Lake are entitled to full credence, but for the present I can dispense with their tesiimony. All they prove is proven by others. Asa Wyman whom you will remember as a very unwilling witness for the prosecution at page 58 says;

"I know Doctor Moulton, on trial; had a talk with him about railroads; he said he had heard they were going to blow up, either "a road" or "the road;" don't know what road he refered to."

Now although this testimony at the time it was given occasioned much laughter, does it not show in connection with the other evidence, that Moulton was cognizant of this Freeland plan? They would have no secrets from one who was to burn a depot for them; and can you doubt what road was meant, or that he referred to the very machine mentioned by Phelps. Asa Burdick on page 109 and 110, says: "I know Dr. Farnham; I was in Jackson last spring; in March or April saw the Dr. going into a grocery formerly kept by Showers, a country gent.; Corwin called the Dr. up and treated him, and then whispered and talked privately together; we went out to-

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gether towards Bascom's Hotel;—took me one side to an alley, and said, I want to tell you something, for I believe you to be a pretty d—d good fellow. Think he was pretty well corned; he then said—the railroad—and here halted a moment, and then continued—hell and damnation! the roailroad will all be blown up in less than a month."

"The Dr. said $10,000 all gone to hell in one minute: said also, he had the tools to do it." The old fellow was pretty well corned when he said it.

Even in their drunken ebulletions, the fullness of their hearts came forth.

Nether Phelps nor Lake prove more than this. The testimony is natural, and apart from the fact that it is given by men of high unblemished character, has truth stamped upon it, and shows a deadly settled enduring combination between Fitch, Freeland Moulton and Farnham. Dobbs on page 119, says: "In a conversation he had with Williams, Myers, and Corwin, "they said they wanted another hoist, and spoke of powder; said if that wouldn't do they would try semething else."

35. Taylor proves that in July '50, the cars were stoned,—he went to the door—Williams and Woliver passed him towards Filleys and he heard one of them say he had stoned them, and would do so while he remained at the Centre.

36. Two wood piles were burned at the Centre. Huntington, who with Stone, put the fire out, says at page 79: "Fitch, Filley, E. Champlin and Mr. Broniger, came up to us. Mr. Stone told those who come up we had a hard night's work, and called on the cars for help, and they only stopped and gave them a damning and went on. Champlin said that was right, we ought to be d——d, and d——m those who would'nt d——m us. Filley said we ought to be burnt up with the wood, then the company would pay our wives half price for us. They blackguarded us for putting out the fire and watching the road. I told them I thought it was my duty to save property when it was being destroyed." "While we were putting the fire out we heard walking and whispering in the bushes near us but could see no one."

Mr. Stone says: "Fitch, Filley and Champlin came there about daylight when we were putting the fire out. I told them I had been to Jackson for help, and also stopped the cars to get help. Fitch replied I ought to be burned up with it and the road would pay my wife half-price for my ashes."

It may be doubted if this is proof that Fitch, Filley and Champlin fired the wood, but their expressions would lead to that conclusion. Why were they there before day-light? Not to render assistance. Their expressions show them capable of the act; and their presence, their means of doing it. Who were the persons heard in the bushes? None but these were seen at any time.

37. Mr. Dobbs, a witness who stands entirely unimpeached before you, says page 119 and 20: "At Hadden's grocery, Williams, Corwin and Myers were present, Williams asked me if I wished to

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go into a speculation to make some money: told him I did; he asked me if I knew where the steamers Mayflower and Atlantic laid up; I told him I did not; that Ward's boats, I believed, generally laid up at Newport.

He said there was a speculation to be made, that they wanted those boats to be brought to the water's edge; said to me, you know al about the arrangements about the boats, and there is $500 ready for you if they can be burnt. I told him I thought it would be a bad speculation; he said my expenses would all be borne, if I had to go to Buffalo, I could live like a gentlemen; said if I succeeded, I could have $500, and he would refer me to the best backers in the county for the $500; spoke of Fitch, Filley and E. Champlin."

Here are three of the defendants, contemplating burning as a means of bringing the company to terms, and referring to three others as willing to aid them.

38 Holmes, page 97, testifies that Williams for no other reason than that he was suspected of being a spy, assaulted and beat him in the most brutal manner. He thus describes the injuries he received: "And I instantly received a blow on my head which knocked me senseless for some time, and paralyzed one side of my head so that I have lost the use of one side of my tongue—it broke my jaw, and I was disabled for some time from the blow. I think Filly, E. and L. Champlin, and Kirkendall were present."

At page 101, John H. Dexter says: "A short time before, I heard Fitch, Filley, Corwin, Prices and others speak of Holmes being a spy; heard Corwin tell the way H. was struck with the bottle; said Williams held up the bottle, and he struck it out of his hand, and it struck Holmes. I heard W. call H. a spy just before the blow; I was present when H. was struck, but did not see the blow; the bottle passed clear by my head, and went very swift; it could not well have been thrown swifter."

I ask you gentlemen, to give this occurrence its full weight. Can the mind fancy a more brutal deed, than this cowardly attack by a young and powerful man, upon an old and feeble one—whose only offence was being suspected as a spy. If there was no combination why this restless dread, this bitter hatred of spies, that breaks forth on every occasion from the lips of these defendants? Every man who did not belong to the combination was suspected and treated accordingly—even Holmes, weak, poor, feeble, tottering on the verge of the grave, could not escape their suspicions and their fury. When we find an old man thus stricken down and almost murdered by brute force, upon suspicion alone, it is fearful evidence that the menace against spies "to kill and shoot them," were not idle words but settled purposes.

I have now gentlemen, gone thro' a fair and candid list of aggressions, comprizing most, but not all of those committed. Altho' I felt as I proceeded that I must have been dull and tedious, you will admit that I could not otherwise have removed the impression that must have been made on you by an able and ingenious argument. A fair and full reading of the testimony was the most direct and

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convincing answer to that argument, and casting aside every attempt at sophistry and eloquence, such is the answer I have given.

You will remember that when the eloquent counsel concluded his list of menances overt acts, he gave this as the result: they numbered twenty-seven in all. Filley was compromised in four of them; Corwin in six; and the Prices in three; and no other defendant was identified with any of them. I need scarce claim that the list I have presented is fuller and more accurate; you see that it is. It is more candid for I have not read the evidence from prepared extracts, but from the full report with by means afforded you to judge if I erred; and mark how widly its result differs from his. Instead of 27, I have 38 menaces, or overt acts; and the following defendants are clearly compromised in the following number of the 38.

Fitch in 19; Filley in 17; one or other of the Prices in 11; Corwin in 15; one or other of the Champlins in 7; Williams in 7; Tyrrell in 1; Farnham in 2; Lemn in 1; Barrett in 1; Freeland in 3; Laycock in 1; Credit in 1; Mount in 2; Ackerson in 1; and Myres in 1. And had time parmitted I might add still further to the list.

When the learned counsel from his long research could only find implication of three defendants, each in only a few instances, we cease to wonder at the fact that he has also been unable to perceive how these repeated acts of aggression, in their number and manner of performance, indicate concert and combination. I will not say "none are so blind as those who will *not* see," but I do think, your views will be very different from his.

And now gentlemen, permit me to ask in all reason, do we not find the evidence of full concert and combination in these acts and the declarations that accompanied them? I do not ask you to look at *any sidgle one of them* only, but look at them *all*, and answer upon your solemn oaths do you believe there was combination? You will remember that concert need not be proved by written papers nor by even parol agreement—nor by any single transaction. The authorities I have read show, and the court will I hope, charge you that combination can be proven, by different acts, done by different persons, if there is concurrence in time, in motive, kind and object. In these acts we have all these concurrences, the uniform threats of those committing them is to injure the road; the uniform object to be effected is the same; and almost every single act is accompanied by a declaration of the same motive, which has been so often rung in our ears; "the road must be compelled for cattle killed."

What is the nature, scope and object of the combination charged against these defendants? simply this, that there was an understanding between them that for the purpose of forcing the road to pay for cattle, they would at all times and on all occasions do what injury they could to the road; and that in the perpetration of these injuries, and, in the event of arrest or trial, they would aid and encourage each other; we do not claim that there was ever a positive distinct meeting of all the defendants where it was agreed to do any one particular act; such pretence or proof is not necessary. The

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combination we charge is clearly proven, when we find sixteen of the defendants, for a space extending over two years, constantly engaged in acts of aggression springing from the same motive and aiming at the same end; when we find the perpetrators of these aggressions freely communicating their crimes to the others, and receiving praise and encouragement; the freest confidence prevailing among them upon these subjects; when we find each one, at all times, ready upon the slightest intimation that opportunity offers; to engage in any, even the most fearful and appalling aggressions, these things are clearly proven, and they exclude every other hypothesis save this—that these men acted in concert; that there existed between them a firmly knit and fearful union; that they were actuated by the same motive and aimed at the same end.

The extent and scope of that combination is also shadowed forth in these acts and menances, within them are comprized obstructions of the trains, shooting at engineers, stoning the cars, burning culverts, burning depots and burning boats. One other observation gentlemen, and I pass from this branch of the case. The only witnesses for the prosecution the counsel for prisoners pretended to assail or discredit, are Lake, Phelps, Wescott, Woliver and Wells: now, you may *strike* out all the testimony of these witnesses, and with the exception of a few of the most venial acts, the proof in relation to the acts I have read continues just as conclusive and implicates just as many of the defendants.

But if further evidence were needed that a combination existed among these men, of the character I have described, we find it in the meetings at Filley's. I will not weary you, by reading the mass of testimony, in which the character of these meetings is described. I will only read to you the testimony of Brown, who you will remember stands entirely unimpeached, and whose integrity is expressly conceded. Brown, page 38 and 39, says:

In April, 1850, became acquainted with the most of them; was then living with Ami Filley, at Michigan Centre; now reside in Jackson village; went to live with Ami Filley in April, 1850; I lived with him about two months; was employed to work generally for him; he then kept public house; frequently saw those persons meet at Filley's: could not identify the times, but they met often; sometimes in the day time and sometimes at nights; at nights they would generally stay till 10, 11 or 12 o'clock, and some would stay all night at times: Fitch never stayed all night; Welsh I have seldom seen at Filley's; Moulton and Penfield were not so often there as the others; Ackerson was not there generally at the time of meetings; came as any other person; the others met there habitually and often.

Have heard Filley speak of R. R. Co. at these meetings; have heard Filley say that he could have no feelings or sympathy for this Company; heard him say that people who traveled on it had better be cautious, they had been warned not to travel on it; have heard threats that they would let them (the Company) know there was a God in Israel; they did not say particularly how they would let them

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know it; have heard Jack Freeland, Mr. Fitch, and Mr. Filley say something about God in Israel; have also heard them speak of the dry marsh; have heard them say, Mr. Filley in particular, that the dry marsh would be a good place to let them off the cars; they allowed it would be a good place to let the cars run off.

Freeland, Fitch and Filley, said they had warned persons not to travel on the road; don;t recollect they said anything in particular of hand bills, but said they had warned them; they said they wanted the road to pay up for cattle killed, &c. The persons I have named, talked the above matters freely among themselves, but shut up before strangers; when they have been talking so and have seen others coming, they would not continue the conversation if the new comers were not connected with them.

At page 100, Dexter, whom you will remember was a stranger, no way associated with the defendants, but who worked for Filley, says: "At their meeting, when I came in, they appeared to change their topic of conversation." You will remember that Wells, Woliver, Dixon and other witnesses, describe these meetings more fully, and testify that the sole topic of conversation was the railroad. What are the elements of combination? Unity of motive, purpose and design, make the fullest combination. Are not all these evidenced by the habitual meetings and the constant discussion of one unvarying subject. How can you judge the intent of men if not by their language, and if words mean any thing, those used at these meetings evince unity of motive to extort payment for cattle, and unity of object to injure this company in every possible way; this is combination and for an unlawful purpose. But we are told there was never an appointed meeting. It is perfectly immaterial how they came together. When together,their language shows that the same hatred of this road burned in every breast; that the same felonious designs were brooding in every heart. We are told there never was an unlawful meeting. Gentlemen, modern days have given birth to many strangeg ideas, but it is among the strangest and most fearful when a distinguished lawyer before a high tribunal, and to an empannelled jury, says in the face of testimony like Brown's (and he is conceded to be a truthful witness) these meetings were not unlawful—what, gentlemen, not unlawful to warn travel off this road—not unlawful to plan and suggest the precipitation of whole trains into the dry marsh (a thing afterwards attempted)—not unlawful to threaten and agree to let this company know there was a God in Israel. For the last three months we have been learning the Leoni vocabulary and know what that expression means. It calls up terrible pictures of property destroyed, lives endangered, and snares for the coming engine. But men may do these things,provided they do not issue public calls, appoint a chairman and secretary, they may come together concoct plans, agree upon arsons, and have at least, one authority upon which to tell courts and juries it is right and not unlawful.—Gentlemen, there is no need of a chairman and secretary to make an unlawful meeting, there is no need to show *all* the defendants at one meeting to prove combination, and though counsel tells us they

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had no tyler at the door, the evidence tells us they had one in every heart. "They talked freely among themselves but shut up before strangers," "when I came in they appeared to change the topic of conversation." Yet you are told the meetings were public, there was no tyler at the door. But says counsel they met casually and at different places. Yes gentlemen, but whenever and wherever they met, the railroad, and plans to injure it was the burthen of their speech, they did not want notice to come prepared to speak of that, it was ever present, they were ever ready; they did not need a chairman to announce the object of the assemblage: the purpose of the combination was single, well defined and fully understood; its members were well known to each other, and whenever or wherever they met, each knew that this would be the most acceptable and interesting subject to the other.

Bnt, geutleman, if acts and meetings do not show combination, take a few individual expressions, proved by witnesses not sought to be impeached in any way. Holden and Galespie, page 73 and 74 prove:

"Gardner spoke of the cars being stoned the night before; Fitch replied that it was very mild means they were now using; if they did not pay for cattle killed they would get something worse than stones; said it would cost the road $100 for every animal killed."

This, of course, contains no allusion to others.

Monroe, page 78. "Freeland said, they had better pay for the cattle; they were all opposed to the road for ten milles back; if spies had been along the night before, they would have got blown over; he would shoot one quick as a squirrel; had a gun and kept it loaded for that purpose." Knickerbocker, p. 96, says: "Fitch said he considered the course, the people were taking, justifiable; they had their cattle killed and could obtain redress in no other way. Judges could be bought, &c." There was no combination, there was no identity of object. Yet *the people* were laying obstructions to obtain redress—community of motive, act and object, but no concert. Welling, p. 110, says:

"Fitch made an estimate of the cattle killed, by the road, near Leoni, and said there had been forty head killed, and that they had already cost the company over $400 apiece. Burnet told him he had better tell the boys they had gone far enough, and that a little labor or a few words from him (Fitch) would stop the depredations. Fitch replied that he told the boys to get pay for their cattle if they could, if they could not they must lay their plans so as not to get caught at it."

Of course "the boys" were imagined persons. It was mere fancy in Burnett to suppose Fitcu was the controlling leader, and a mere idle jest in Fitch to say he had given such advice to imaginary persons. Yet there may be some truth in this. These two defendants, you will remember, were on the committee appointed to confer with the Attorney General, and leaders are generally appointed on important committees. I refer you to the letter of Fitch to Mr. Brooks.

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"Michigan Centre, Oct. 29, 1849.

"Mr. J. W. Brooks—Dear Sir:—Almost every day some persons wish to take passage on the cars at this place, but the trains refuse to stop for them. Yesterday Mr. G. C. Chatfield, mother and sister wished to take the cars for Detroit and gave the usual signal, but no notice was taken of them. Now, if this policp coms from you or your legal advisers, as did the insulting half-pay proposition for killing cattle, if serious accidents do occur on the road, on your head, and yours alone, must rest the responsibility.

Yours, &c., Abel F. Fitch."

And ask you to apply to it the following languege taken from the charge of an eminent judge: "It frequently happens that unnecessary, strange and contradictory declaratious cannot be accounted for otherwise than by the fatality which attend guilt. Apply the same rule to Fitch's prophesy that the cars would be late the day they were run off at Galesburg. I refer you to the "Price Boys Warning" so often alluded to, signed "By order of the Committee." Dowdle, p. 110, says he asked Penfield what the Leonians were threwing the cars off the track for; Penfield replied, "we are contending for our rights." But the counsel will tell you "we" is indefinite, it means anybody and therefore points to nobody. Nichols, p. 120,—Fitch, speaking of thase instructions, said: "They were the only means for bringing the company to tersm." (Here Mr. Van Dyke read from the testimony of several other witnesses and continued.) And so on gentlemen to the end of the chapter, I might detain you for hours reading similar expressions from almost every one of the defendants; but why waste your time on a part of the case so fully proved. I need not recall to your mind the constant expressions of all the defendants relative to spies—but I will ask you how came among these defendants this uniform hatred and fear of spies? How many of the defendants are proved to have constantly used threats against spies? Nearly every one. How many are uniformly found speaking of people being warned not to travel on the road? Nearly every one. How many are found speaking of the dry marsh? More than half of them. How many speak of the impossibility of conviction, and their readiness to swear for each other? Every principal one—Fitch, Filley, Williams, Prices, Champlin, Freeland, Corwin, who can prove that a "horse is a blacksmith shop, and every hair a candle!" and others whom I will not detain you by referring to.

I respctfully submit to you, gentlemen, that the proof of combination is perfect. We find it everywhere, It stands out on every page of the evidence. These defendants do not talk the language of men unconnected with others—on every occasion they speak the language of combination. Each one speaks in the plural, "we are contending for our rights." "I have advised the boys," &c. &c.—The same uniform ground of complaint is on the lips of each one—"they must pay for cattle." They meet habitually, discuss the same unchanging theme. At these meetings plans of outrage are suggested—they are afterwards carried into effect. We find most of

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defendants identified with these acts. We find others snstaining them, and if all this fails to prove combination, the entire law, relating to conspiracy, might as well be blotted from our books, for proof of it would be impossible. But combination is proved, and I feel satisfied there is no doubt remaining in your minds on that subject.

It is true, gentlemen, that Woliver, one of the witnesses who testified to the sayings and doings of these conspirators, has been assailed.—ed. The evidence of the acts and combination deducible from them is quite perfect without poor Woliver. But what is said against him? Why, that he is a poor worthless driviling sot. And who made him so? Who made him poor? Who robbed him of health and happiness? Who paid his year's labor by charging him for a barrel of whiskey? Who clothed him in rags, dashed every trace of God's image from his features, and filled his veins with fire, until every affection was scorched, every flower of youth blighted, every hope consumed, and until even his reason tottered on its throne? You have heard it all—and now this same Ammi Filley would tell you—"Don't believe this poor drunkard."

But, gentlemen, the guardian angel of Woliver had not quite left him. In a moment of bliss for him, he was led from the ruinous influences of Michigan Centre, made an effort to burst the toils that bound him: he has thus far redeemed his promises of reform; the blood is circulating once more in healthful current through his veins; life has once more smiled upon him, and the citizens of an interior village, who cheer him on in his new career, stand ready to vouch for his truth and good conduct.

WEDNESDAY MORMING.

The Court being in session, Mr. Van Dyke continued his argument as follows:

May it please your Honor and Gentlemen: I intend this morning, as briefly as the purposes of Justice will permit, to take up the alleged contradictions in the testimony of Wescott. I trust by a a candid and truthful review to show you that he is not impeached in a single material point—that his testimony is fully corroborated, and that he has sworn to nothing more startling or improbable than witnesses who stand before you unassailed. If I succeed in thic, you will be bound to give his evidence the weight and consideration which it merits.

I may not take up these alleged contradictions in the sama order in which they have been presented by the other side, but I will go thro' with them all.

1. It is claimed to have been shown that Wescott could not have got through the fence and heard the conversation to which he testified between Fitch and his wife. Whether he got *through* the fence, or passed over it, is perfectly immaterial. I will say but little on that point, for the material question is not *how* he got there, but *was* he thnre, and did he hear the conversation. You have seen the fence and can judge if he could not have passed inby the removal of one or more pickets. I think your recollection will tell you that at the very spot described by him there are several new pickets, and several old ones, the

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nails of which appear to have been removed; but whether he got in thus or not is immaterial, and the witness may easily have been mistaken in his detail of a thing with which his mind was not impressed, or as to the spot where he entered on a dark night. The defence have sought to establish that at the time mentioned by Wescott, (the last of August) Fitch and his wife had their bed-chamber up stairs; this is material, ane if clearly established so far is an Impeachment. How is it established? Miss Fitch testified that at the time, and during all the warm weather, they slept up stairs; that it was their invariable habit to do so. Miss Beman says that she was at Fitch's on the 27th of August and a later period, and on both occasions they slept up stairs. Miss Clark also proved that up to September they roomed up stairs, but you will remember that on cross-examination she showed clearly that she was mistaken and had left Fitch's about the 22d or 23d of August. She says, "I still think it was about the middle of June, '50, I went there, and that I staid 9 weeks and returned to my father's." She in another place states that she went to Fitch's in the middle of June, and had $1 per week, and received either $8 or $9 at leaving. The best evidence of her intention to be truthful, is, that while she perceived her error she does not attempt to cover it up. At first she undodbtedly thought she was at Fitch's till September, probably that had been impressed upon her mind; but on the stand she fankly states other facts which she must remember better, and which show that she left there in August. I do not wish—it is not necessary that I should—attribute to the girl Amanda Fitch any intention to deceive. I can well imagine, without imputing to her anything that could soil the purity of her young soul, that while her child's warm emotions beat in sympathy with her father and stepfather, while her childish ear was keenly open to the sobs of her mother, it would be easy to bend her memory to her heart's wishes, and impress npon her willing mind the truth of any slight change of date or fact which might seem to tend to the relief of the peril and distress of her dearest and dearest friends. You are told she is young and candid. Concede it. She is not more so thon that other child Miss Clark; and if the latter was deceived and erred, how much more readily and naturally the former? Miss Beeman, the friend of Mrs. Fitch, the welcomed visitor at their house, is not infallible; and she, too, might err. Against this testimony, gentlemen, you have that of C. Burr, who proves that on the morning of the 29th of August, and on another morning a few days preceding it, he saw Fitch in bed in the *lower room*, and that on several occasions in August and September, when he called to see him, he came *partly dressed* out of that room. Also the testimony of Dr. Backus, the attendant physician of Mr. Fitch, that he most frequently visited him in the summer and fall, and his lodging room was always *below* stairs. But Mrs. Fitch was produced upon the stand though every lawyer must have known that her testimony on this point was incompetent. I will not say that she was brought here for effect or to move the sympathies of you or this crowded hall; but I will say she was *not cross-examined.* She passed in silence from the stand—she will pass in silence now. I would not to subserve any cause, indulge in reflections which might move her overtaxed sensibilities. May

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her sorrows soon pass, and happier and brighter days compensate her for the grief and gloom of the present. I will, however, say to the counsel that before he indulged in remarks upon this subject, and the exclusion of Mrs. Fitch's testimony, he should remember that he was the first to shut out the light by objecting to the proposal to prove by Dr. Backus, a gentleman of the very highest integrity, that Fitch admitted to him that he *had seen a spy under his bed-room window.* To contradict a witness, the proof must be as strong and clear as that which establshes an affirmative fact; but here, even if Wescott's testimony is disregarded, there is stronger, much stronger proof, that Fitch slept in the lower room, than that he did not at the time in question, and therefore the re is no impeachment.

2. The defence claim to have proved that Wescott could not have got through the hole under Filley's bar-room, and that hence his narration of the conversation there stated to be heard is false. I refer you to the testimony on this point. First there is the testimony of Hildreth. (Here counsel read Hildreth's testimony.) You perceive gentlemen, he only *thinks* he opened the hole 'tis true; but he did not measure it; but did not even notice it particularly, to ascertain its size; but *thinks* it was no larger in December than when he opened it.—Young Fitch proves that on Christmas day he tried to pass through the hole but could not. This might be; you were there and noticed that two large stones stand beside the hole; during the cold days of Christmas, it would be most natural that one or both of them should be placed in the opening, to exclude a portion of the air that would otherwise render the room over it unbearable. But in answer to all these doubts, we have the testimony of Mr. Clark, that in consequence of a communication from Wescott, he examined the hole and it was then as large as now. Knowing Mr. Clark's high reputation, knowing that you would believe every word that fell from his lips—counsel try to persuade you that he erred as to the date. There can be no error; he went examine in consequence of *Wescott's communication,* and from other testimony you can have no doubt as to what that communication was.

3. You are told that Wescott was indicted at Mackinac; to avoid the odium of it, he testified that Doctor Rankin, the prosecutor was himself indicted for perjury; fled and committed suicide to avoid conviction; but that the Company clerk of Mackinac, proved the Doctor never was indicted and died a natural death. Such is the statement made to you. (I refer you to Wescott's testimony, p. 95.)

"The indictment against me at Mackinac, was obtained on the affidavit of Jairus Rankin, before the grand jury. A *nolle prosequi* was entered, because Rankin was indicted by the same grand jury for perjury in making that affidavit. Wm. Gray was the prosecuting attorney. I went there for a trial three seasons, but he never appeared as a witness against me. I have been told that Rankin committed suicide."

You will perceive that Wescott does not say that Rankin committed suicide; he was only told so. You will also remember that it was stated by the prosecuting attorney, here in open court, that he had seen an account of the suicide of some Doctor Rankin, supposing he was the same Ran-

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kin, had mentioned it to the witness. By referring to the testimony of Mr. Kevan, the clerk of Mackinac, you will perceive that although there was no indictment found, a complaint was presented before the grand jury against Rankin, for perjury; a fact which might well lead the witness into the mistake. But this argument is needless gentlemen; the entire matter is immaterial in this case, and can only affect Wescott's testimony if he *meant* to deceive you. Did he mean to do so? If so, he certainly took a strange method, for unasked, he volunteers the statement that Mr. Gray was the prosecuting attorney; thus referring to my talented and cherished friend and colleague, a respectable member of this bar, *then in court*, and now at my side, and who from the official position he occupied, could give full and accurate information, thus furnishing a witness on the spot, to contradict him if he was false. As I review those alleged contradictions, they fade so rapidly under the application of the testimony, that I almost question if they were seriously urged.

4. It is stated to you that Wescott testified he saw Fitch and Dows *on Friday*, about 8 P. M.; go to the house of Gay, and it is claimed that this is contradicted by the testimony of Jones, Holden, Brown, and Sumner. You will remember that the Friday in question was February the 14th. On direct examination, at page 95, Wescott says: "I next saw them together, *about* the 12th of February, on Jefferson Avenue, on the corner of Woodward; I was dressed in disguise; they were conversing; they went from there to the house of Washington Gay, together." Although the report of the testimony does not contain any question and answer, you will remember that the defence, on cross-examination, tried to get him to fix the day as *Friday*, and, after some time, got him to say, at page 89—"When I followed Fitch and Dows to Gay's house, it was in the evening. I *think* this was on Friday. I was alone when I followed them." And this is all that is to be found on the subject. By referring to the testimony of Jones, you will perceive he does not pretend to account for Fitch on any evening. Holden saw Fitch on the 12th, soon after the cars got in. The witness then went, and got his tea; then went up town, was gone about *half* an hour and again saw Fitch on his return; thus leaving Fitch unaccounted for just at the hour mentioned by Wescott, (for you will remember the cars arrived about 8 P. M.) and for a sufficient time to go to Gay's.—Brown saw Fitch on the 13th, soon after the cars arrived; parted from him; got his tea; dressed for a cotillon party; and, about 9 P. M., again met Fitch, and attended the ball with him; leaving, on this night also, abundant space for the visit to Gay's. Mr. Sumner saw Mr. Fitch twice at a fair on Saturday night; but does not imply that he could not have gone to Gay's, as stated; for he does not name the hours when he met him; and, indeed, to even hint that he noticed the incomings and outgoings of any of the ruder sex, on an occasion when he was surrounded by the bright eyes of woman, would be an imputation which my very gallant friend, Mr. Sumner, would resent. We concede that the testimony of Brown excludes the idea that Fitch went to Gay's on Friday evening, the 14th, which probably accounts for the strong desire manifested to pin Wescott down to that day, on cross-examination. You perceive, then, gentlemen, that if Wescott had fixed the

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date as either the 12th, 13th, or 15th, there would be no contradiction. Now, did he swear to the 14th? On his direct examination, when his mind was left free to its real impressions, he thought it was about the 12th, (Wednesday.) Goaded, on cross-examination, he said he thought it Friday. It is clear you cannot contradict a witness by dates or hours, when he only *thinks;* but it is clearer still, that, when he has two "thinks," you cannot select your choice one as his positive evidence, and contradict him on it. The presumption of law is the other way; it is in favor of a witness' truth. The whole of this matter, then, is, that the defence can say they came *very near* contradicting him. They were within a few days and a few "thinks" of it.

5. Wescott denied having used threats that he would yet see Fitch "peeping through the grates." Mr. and Mrs. Tull swears he did. We have to meet this as we best may; but I think there is little in it. Wescott may have used the threat and forgotten it. You will remember that Tull fixes the time as the period when Wescott was accused of being a spy. It is very natural that, in the heat of the moment, smarting under the threats and abuse that were heaped upon him, he would return threat for threat; but what men say in hot, is often forgotten in cold blood. Again, gentlemen, if Wescott used those threats, and remembered them, why should he deny it? He was apprised that Tull and his wife were here to contradict him, and could easily have given some slight explanation, to break the force of their contradiction. If he never used the threats. or if he used them, and forgot exactly what he did say in the heat of passion, this does not impeach him. But the learned counsel tells you Wescott denied what Mr. Tyler proved, viz: that Wescott said—"A web was being woven round Fitch that would send him to State Prison." This, gentlemen, sounds serious. Ordinary threats, used in the heat of blood, amount to little; they are evanescent as the feeling that generates them. But here we have method—something that savors of the alleged counter-conspiracy; and how shall I answer it? Simply by telling you, gentlemen, that there is *no such evidence.* Neither Tyler, nor any other witness, swears to anything of the kind. Wescott was asked if he used these words to John Wells and Welch; he denied that he did; and there the matter rested. Neither Tyler, Wells, nor any other witness was called to contradict him. My answer is short, but it is complete—there is *no* such testimony. If there is, counsel are here; let them now point it out, or anything which looks like it.

6. You are told that while Wescott and Sherman testified that Fitch and Wescott were present at the fight in the ball alley, A. Cozier proves that neither Wescott or Fitch were at the alley till after the fight. By referring to the testimony of Cozier you will perceieve that he testifies to no such thing; on the contrary, he proves distinctly that Fitch and Wescott were about there at the time; if he did the oath of one witness could not impeach that of two—particularly when the defence, if they relied on this as a contradiction, could have fortified Cozier by J. B. Tull whom Cozier says was with Fitch, and who; altho' called to another point by the defence, was never questioned as to this. The failure to question Tull on this point is evidence that he would not say Fitch and Wescott were not at the fight, yet if

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they were not, he should not have known it for he was with them.

7. You are told he is impeached as to the plan to kill him by stoning him through the window, because as counsel argues, the piazza from which the stones were to be cast is but three feet wide, and no arm in such a space could send a stone with sufficient force to do injury; and hence the whole story, yon are gravely told, is false. Gentlemen, you will remember this plot is not verified by Wescott alone. I yesterday read you Sherman's testimony, and you will remember that on this subject it is fuller and more minute than even Wescott's. You must believe him, for not a breath has been raised against his veracity, and while he and Wescott tell precisely the same tale, how are you to conclude that one tells the truth, the other speaks falsely? Again, if the argument of counsel was correct—if stones could not be thrown from the piazza, would it contradict Wescott? no, for he does not swear it could be done, he only tells such was the plan *of defendants.* But again gentlemen, tho' no athlete, I fancy that in three feet space (the piazza is four feet,) I could send a stone with sufficient force to do injury, aye, even to kill. But of this you can judge.

8. You are told, and told with all seeming seriousness, that he is impeached, because if the rules of evidence had permitted him to testify Mr. Harsha would have contradicted him *'by implication,'* so they came very near it again. I am glad that I am through with these alleged contradictions. As we have called them up for review divested of the imposing uniform and decoratiou in which the eloquence and imagery of couusel dressed them, they seem each one more ludicrous than its predecessor. A little more and thescene would better befit the after piece of the stage than a solemn trial for a high offence.

I have no doubts in assuming, gentlemen, that I have shown to your satisfaction that the alleged contradictions of Wescott are visionary; he is not contradicted in a single essential point. You remember his demeanor on the stand; it was frank. He gave his evidence clearly and without hesitation; he passed thro' a long and searching cross examination without the slightest material variance; altho' long a resident and well known in this community, no attempt was made at general impeachment. I might stop here, gentlemen, and require you to give credence to every word he uttered. Jurors are not at liberty to disregard testimony, when the witness stands fair before them without impeachmen, or contradiction. But I will go farther, gentlemen, I will take up a few of the most material points of this testimony and show you that in *them* he is fully corroborated by witnesses whom you dare not but believe.

He tells you the defendants were in the habit of meeting at Filley's discussing the sugject of the Railroad, and breathing threats against it. You have the same teslimony quite as strong as he gives it, from Brown, Dexter, Wells, and half a dozen others. He tells you that Fitch and other defendants said they had sent handbills, warning persons against traveling over the road. Attorney-General Lothrop, at page 158' and Chadwick, at page 107, testify to the same thing in equally strong terms, and so do other witnesses. He tells you that Fitch and others told him they were combined together to do all the injury they could to the road, that in effect, they had taken the law in-

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to their own hands,and were determined to bring the company to terms. Let your minds revert to the acts done, the conclusive evidence of combination which gathers round the proof of them, and you have from good and unquestioned witnesses, all and more than all that Wescott says. Look at the testimony of Attorney-General Lothrop on page 158, that Fitch and Burnett intimated there was no use in seeking redress at law, that obstructions were the only means left to bring the company to terms. Look at the testimony of Mr. Knickerbocker on page 96, where he tells you Fitch justified the obstructions, scouted the idea of having recourse to the established tribunals, and proclaimed that the money and influence of the company could corrupt alike the judges of the inferior and supreme courts. Again, Wescott tells you the scope and design of the combination at pages 85 and 86. He says that Fitch said, "if they could succeed in killing from 100 to 150 passengers during the Fair, it would bring the company to terms, if not, he wanted to know what in God's name would? If he failed in that, God damn them, we will burn them out. He also stated he would give me or any other person $1000 to burn four depots, viz: Detroit, Ann Arbor, Jackson and Niles, or that he would give $250 for burning either one of them. He said there were men among them who would do it, but thought it had better be done by some one not living at the Centre."

I confess, gentlemen, that here is something so fearful that the mind hesitates to yield it credence. But there is no accounting for the actions of men who begin by believing in the utter corruption of all who surround them, even of those whose virtue and wisdom have placed them to preside over the most sacred institutions; and who end by adopting vengeance as their guiding star, and hugging that hideous passion to their heart. They become blind to reason, justice and humanity. Every feeling turns to morbid hatred; every pulse throbs with bitter passion, and the innocent and gnilty are alike sacrificed to minister to an insatiate appetite for revenge.

But we cannot refuse to believe merely because of the nature and horror of the crimes, Fearful and fiendish as this design is, it was attempted. You remember engine after engine was obstructed; you remember the testimony of Spaulding, that the obstruction at the dry marsh was intended for the passenger train, and that if it had come as expected, its hundreds of passengers would have sunk deep, deep into that hidden and hideous lake. You are asked is it possible that Fitch would design this deed, when he himself, and his family and his friends were passengers during the State Fair. 'Tis true they were at the Fair, but we find him and his family always on the day, never on the night train; and it was at night this fearful tragedy was to be enacted. But his friends. As to that portion of the argument I refer you to his own words to Chadwick, page 2fi7, "my friends have been warned, and if they will ride over the road, *they must suffer the consequences.*" There is still the intention to burn depots. Is Wescott alone or uncorroborated in this? Is he the only witness who proves that the burning of depots was embraced in the designs of this combination? Not at all. Caleb Loud proves it. And is he a witness to be believed? Even counsel for defence do not question it. McMichael

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proves it, and his truth is undoubted. Morgan Wescott proves it, and nis truth is unquestioned; and Dobbs proves that *burning boats* was also within the scope of their designs. These four witnesses stand fair before you, and you heard their testimony as I passed over the acts of aggression. They are not guilty of the crime of being employees of this Company; they are not polluted by any connection with "hated corporations." And it is not even claimed that grounds of disbelief have been presented against them. Yet they prove the very substance and essence of what Wescott proves; that fire, *fire*, was an instrument, the use of which was contemplated by these defendants. Wescott tells you again that it was part of the understanding of defendants, that they would, true or false, swear each other clear, and had friends of station and influence who would procure witnesses to swear to anything. Is Wescott alone in this? Have you not heard the same from other witnesses? Have you not seen it with your own eyes, heard it with your own ears? I will not imitate the distinguished counsel and tell you what Cooper would, but was not permitted to tell, but I will ask you, did not Hawley perjure himself? Was he not suborned to it, by a friend of these defendants? Was not that friend (the Rev. Mr. Billings) a man of influence? It is needless to weary you longer with this. I might go all through Wescott's testimony, and show that every line is corroborated; that he swears to nothing but what is corroborated by undoubted witnesses. I have referred to the most important portions of his testimony. I have shown you that he does not stand alone, but that corroboration comes in upon you from half a dozen other sources. I feel confident I have gone far enough to ensure credence for every word uttered by him.

Gentlemen, at this point I will ask you to pause for a moment and review the ground over which we have advanced. I have shown you by their acts, their assemblages; and repeated declarations, that these defendants had conspired to injure the Railroad Company, by breaking its cars—diverting travel from its line; stoning its trains, burning its culverts; shooting at its engineers; obstructing its engines; blowing up its track; and burning up its depots and other property, for the purpose, in their own language, of compelling the Company "to come to terms." I have shown you that these threats were not idle boasts or unmeaning outbreaks. What they *threatened* to do, invariably *they did.* I have shown you that every one of these defendants against whom a conviction is sought, was identified with the overt acts, many of which are of a character far more fiendish than the burning of a depot. All this has been established by witnesses, whose truthfulness is manifest and undenied. This is all proven, exclusive of the testimony of Wescott; his testimony (after the examination and analysis we have given) advances us one step farther; we find by him that it was contemplated to burn the Detroit depot; others prove it was contemplated to use fire—to burn boats and other depots; he advances the case to the mention of Detroit specially. This then is the position of our case.

The only thing yet remaining, is to identify these defendants with the fact. Gentleman, if an individual threatens to injure your business, assault your person, your property; and burn your house; if he is clear-

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ly identified carrying out the first three portions of his threats; and the house is burned by an incendiary, how much proof will you require to satisfy you that he is the man? Just so much proof do you want to be satisfied that these defendants are the persons who caused the depot in this city to be fired. So far we have advanced, and you will perceive that although these men are not now upon trial for expressions used and acts done in Jackson county; these expressions and acts, have, nevertheless, an important bearing upon the offence for which they are on trial.

Gentlemen, from time to time, as this trial progressed, much was said, and more felt, at the frequent and long delays which marked its history. The counsel for the prisoners, to escape from the responsibility which they cannot but feel must rest on them, for the unnecessary protraction of the proceedings, have, with well-feigned earnestness, turned round on the prosecution, and charged that we desired haste at at the sacrifice of their constitutional rights, and begged for stipulations to cover up the blunder of placing so many on trial at once.

Let this veil be removed, and let truth be apparent.

These defendants were placed on trial together, because it was evident that, if tried separately, and the mass of evidence adduced against each which would be competent from the nature of the case, no living man could foretell the end. And again, the defendants themselves *desired* a joint trial, to save longer durance in jail, and increased expense, as is evidenced by their *own consent and writing* on the files of the court. And yet counsel, in the very face of these facts, charge the joint trial as both an oppression and a blunder on the part of the prosecution.

If, indeed, defendants have ever been solicited to facilitate this trial at the sacrifice or risk of any legal or substantial benefit or advantage, then may they well throw back in our teeth our frequent censures of their long delays. But such is not the truth.

We respectfully submit that it is the duty of every one engaged in the administration of Justice, in whatever capacity, to avoid unnecessarily impeding its course; but, on the contrary, it *is* their duty to aid in rendering it as speedy as is consistent with the rights of parties litigant; that courts crowded with onerous duties should not be intentionally hindered; that jurors forced from their own business, interests, and homes, at severe sacrifices, and sometimes irreparable loss, should not be uselessly detained; and that expense, avoidable and unreasonable, should not be accumulated, to be wrung from the tax-payer; and that they who do these things have a fearful responsibility resting on their heads, especially if it be found that sickness and death ensue therefrom.

Gentlemen, I appeal to you for the truth of what I uow assert, for you were eye-witnesses. Every cause of delay which could subserve the purpose, has been seized upon with avidity by the defence. Was a prisoner temporarily sick, the defence would not stipulate to proceed, but doggedly stood still, and mockingly declared *their readiness* when the prosecution would produce the absent party. Was a juror unwell, and an offer tendered to have the testimony taken in his absence, and fully read on his return, it was rejected with contempt. And these scenes over and over again, when, too, the absent prisoner was

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one whose presence could afford neither information or aid to counsel; and when, too, the testimony proposed to be taken in a juror's absence, was of that character which would lose no force in being read to him from the minutes of the court.

Thus were we kept three long months; thus were you detained and annoyed a large portion of the time from Spring to Autumn; thus have expenses accumulated; the wheels of justice been clogged, and excitement kept up. So far as this defence had power or opportunity to effect it.

And to subserve what purpose? Was it to gather from the tamaracks of Indiana the Hawley's and Dyers of this defence? Was it that the Rev. Billings might cement the bond of friendship between Adams and his associates whose names stain or grace the annals of this defence? Was it that "cold inanimate nature" might be dragged forth from its *easily found* hiding place, to speak, not in the voice of *discovered* iniquity and confession, but on the originally hoped for "thunder tones?" Was it that tone might permit the preparation of elaborate tables, and ingenious theories of defence? or was it, worse, than an all, that death might in some chance blow end the deep and sure perils of this trial? Answer ye. And let counsel who have thus played this game with time, not now complain, if all has proved in vain; if *they* have had to drink the poisoned chalice to its dregs, and if they have again learned the severe truth that justice though slow is certain.

But for these most flagrant delays, consuming far beyond a full months time, this trial would have been ended long before serious disease or death overtook a single prisoner. Your verdict would have been rendered; these prisoners restored to liberty or confined to the penitentiary, where exercise, occupation, absence of uncertainty and excitement, and the fresher air would have preserved them in wonted health and vigor.

In view of these facts gentlemen, I ask you, how does it become the counsel for defence to speak of delays, or to wake up the dead, whose ghostly shadows should strike terror to their own souls.

And after all Gentlemen, perhaps, death although so feared and terrible, may even in its visitations in the course of this trial, have been kindness. Those whom it has touched with its fatal dart, are beyond the perils of this scene; beyond the dark shadows which seem to gather around its end; and if prepared, as counsel in time for the dread change "after lifes fitful fever they sleep well."

One can scarce look over this long list of defendants, and not sigh, that while yet in their childhood they had sank sweetly into their last repose, long before vice and crime had stained their youth, and subjected their manhood to this ordeal at the bar of their offended country. Then affection would have sung their last lullaby and kept their memories fresh in undying love. Now, God only knows their doom and their destiny. If that doom proves to be the Prison House, perchance the threats of vengeance, and the deeds of crime which have so long disturbed the nights, and desecrated the days of Leoni may cease. Punishment may effect its objects, security to mankind and reformation to the offender; and unadulterated good may ensue from this vindication of the laws.

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But to return to the immediate matter upon which you are to decide. The Indictment charges that the depot was burned by Geo. W. Gay, wilfully and maliciously, the other defendants being accessories before the fact. Was the depot burned by an incendiary, and was Geo. W. Gay that incendiary? It is necessary that the prosecution should adduce evidence sufficient to satisfy you that the fire was not the result of accident, but the act of Gay. It is claimed that such evidence has not been adduced. Let us examine and see. I will not trespass upon your time by reading at length the testimony as to the position of the machinery, the condition of the depot, and the precautions taken to guard against fire. By reference to that testimony, you will find that all the machinery used was of the safest character; that no precaution against fire was omitted; that the building was so constructed, and the machinery so guarded that the superintendent, Mr. Brooks, a gentleman of vast experience and judgment in such matters, deemed insurance against fire unnecessary, and never did insure. You have the testimony of seven practical and experienced engineers and mechanics, experts, whose opinions are evidence, that in their judgment, the fire could not have been communicated by the machinery. Listen to a few of these opinions. Bear in mind that they come not only from experts but from men who were engaged about this identical machinery, and frequently examined it. Avery, page 21, tells you, "I do not think it possible for it, (the fire) to have taken from friction; that is now my opinion, and I thought so from the first." Frazier, page 20, says, "In my opinion there was no danger of fire from the friction of the machinery." Town, page 24, says, "In my opinion there was no possibility of its so taking fire." Ives, page 25, tells you that supposing the pulleys to revolve two hundreds and fifty times a minute, which is proven to be their greatest speed, he thinks there was no possibility of fire from them—they would not generate fire whether oiled or not, and he considered this machinery the safest he ever saw. Mr. Brooks and others testify to the same. Several of the same witnesses tell you that they repeatedly examined the journals, the only place where fire could generate, and never found them heated to any extent. Babbit's metal —constant examination—every precaution was taken against fire by the friction of the machinery, and it is really idle to dwell upon this branch of the proposition. The testimony is conclusive and utterly excludes the possibility of fire by friction. I will, however, call your attention to one other fact proven by Mr. Avery. There was but one pulley in the cupola, "and it ran the slowest of all." You will perceive then, that if we hereafter show that the fire originated in the cupola, it is idle to ascribe it to friction. But the counsel gravely tells you that Mr. Smith's mill was burned at Clinton. But turn to his testimony, and you find he says, "my experience is that elevators well constructed, and well cared for, cause no especial hazard, but not well attended to they do." It was scarce worth while to bring Mr. Smith sixty miles to tell us this. We were aware that elevators to be perfectly safe should be well constructed and properly attended to, and therefore gave you abundant evidence to satisfy you that this was so.

[Here Mr. Van Dyke read and commented upon the testimony of Mr. Brooks and others, and proceeded.]

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But conceding that the machinery was all safe, we are told that there was the engine, and the fire might have been communicated by that. As matter of history the counsel told you there was a fire lately in Chicago supposed to have taken from an engine room, and read you a letter from the owner of the property, showing that his engine was placed and guarded in the same manner as the one in the Depot. Not a day after I received from Henry R. Williams, a gentleman well known to you, the letter which I now hold in my hand, stating that the owner of the property informed him he was satisfied the fire did not take from the engine, but was the work of an incendiary. Neither of the letters, gentlemen, is proper matter for your consideration, yet I am glad that the reading of the one called forth the other. It serves to warn us of the danger of going out of the case or paying the slightest attention to anything beyond the evidence. Now to return to this engine. What is it? Mr. Wood, page 26, says:

"I run a stationary engine; that is my occupation. I remember the fire at the depot. I run the engine at night. *That night it stopped a quarter before* 12. *The fire, before I left, was allowed to run down; the engine was pumped and everything secured.* To my knowledge it was not run again that night. Do not recollect that any *locomotive came into the building that night.*"

The only testimony upon this point, excludes the idea of the fire originating in the engine room. Here again, you will remember that if the fire first appeared in the cupola, it could not have proceeded from the engine, as the latter was on the first floor. But it is said it may have have taken from candles hanging on posts, or used in the bins on the second floor. Here is the testimony upon that point. Duncan Stewart who had the superintendence of that portion of the building, says:

"The workmen in the bins used candles in tin sconces. I was in the habit of going frequently about the bins at night to see that my orders respecting lights were obeyed. I believe they were delivering wheat on the night of the fire. I never but once saw a candle fastened by grease to the wood. I went up as the man was doing it. I never knew of its being done but once. I then stopped its being done. I had the nails placed for the sconces myself, so as to be out of the way of danger, and the men were not allowed to hang the sconces on any other nails."

And Daniel Stewart says:

"I was there when the work ceased the night before the fire; there was only one candle used there that night, *and I put that one out about a quarter before twelve.*"

There was no fire then from candles. Another chimera has fled before the evidence. But it is said that it may have taken from sparks issuing from the engine of a locomotive, passing through the depot below, or of some steamer passing in the river. The answer to this is easy. Every person who could be found who was near the building that night, has been on the stand, and all say that to their knowledge there was no locomotive in the depot, and no steamer fired up near the wharf that night. There is no evidence from the defence to raise such a presumption—the evidence of the prosecution negatives such an

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idea, and even if it did not, it is not for jurors to strain after imaginary and unlikely ones.

The Depot then *was* burned, and not through accident. It had long stood in its strength and usefulness. It was dedicated to a substantial and noble purpose; filled with the rich products of our soil, destined for the eastern market; and with the merchandize of our interior merchants. There it stood, a credit to our State; an ornament to our City. As we left for the East, it was the last sight our lingering eyes could *catch;* and as we returned, it was the first to greet our vision. On the evening of the 13th November, the autumn's sinking sun cast the shadow of this long and graceful building upon the rapid waters of our river; the midnight bell roused us from our slumbers, and hastened us toward the fated spot; but long before we could reach it, we could read its doom in the reddened sky, reflecting back the lurid flame. That costly structure, and all the accumulations of labor, enterprise and industry it contained, were enveloped in fire; the morning sun revealed to our sorrowing eyes, a vast heap of smouldering ruins; and this, gentlemen, was the work of an incendiary.

Who was that incendiary? Under the present Indictment, the prosecution was bound to prove to you that it was George W. Gay—and it has done so. But as all evidence on this point tends also to prove that he set the fire in the Cupola, it is necessary that I direct your attention to the proofs on that head. The prosecution does not wish, nor is it necessary to charge any want of truthfulnesss upon the witnesses produced by the defence to this point. The testimony of the witnesses on both sides, is quite consistent; there is neither necessity or propriety in imputing falsity to either. Some half dozen witnesses swear when they first saw the fire it came from the scuttle in the roof. Some eight others say when they first saw it, it was confined solely to the cupola—all agree that at some future period, the fire was in both scuttle and cupola. The only question then is, which saw it first; and where was it *then.* Each witness for the defence states he was aroused by the alarm of fire. Capt. Turner it was conceded, was the first who gave the alarm; he then was the first who saw it; and he tells you it was then a bright blaze in the cupola, not larger than a half bushel. Mr. Savinac, at whose door he first knocked, tells you he came to the door undressed; looked out; had a view of the scuttle; *there was no fire there, but there was in the cupola.* Mr. Rowland an Engineer in the fire department, tells you he got there before any Engine arrived; as a matter of duty ascertained where the fire was, to enable him to locate his engines when they arrived; the fire was *then* in the cupola, and *in no other place;* but some minutes *afterwards* he perceived it had extended to, and came out of the scuttle. Police Justice Higgins tells you, he commanded a view of the fire from his window; when he first saw it, it was confined to the cupola; he watched its progress, and saw it extended to the scuttle. Mr. McFarrand testifies with equal certainty and clearness to the same effect.—So do the other witnesses for the prosecution, all of them gentlemen of the highest character and respectability. And what other conclusion can you come to, than that the defendant's witness speak truly; they tell candidly what they saw; but they did not see the fire

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until a later period than the others, and after it had extended to the scuttle. As we review the evidence, we find that this point of the case looms up from it, clearly and firmly established.

Was Gay the incendiary who burned the Depot? It has been sworn by four witnesses that he said he was; and that he set the fire in the cupola. But first look at the probabilities. Gay lived in this City not a stone's throw from the Depot; he was where he might do it. We were told in the opening, that credible witnesses would establish the fact that for three weeks before, he was not able to move without crutches; but it was *not* proven; there was not a solitary witness—not even from Leoni, who could screw his courage to that sticking point; they did not even produce the crutches—though they were to be a part of the "mute inanimate nature." which was to overwhelm the prosecution. Gay then, could do it. He was familiar with the building, its construction, and its different parts; knew the hours and occasions when he could pass in, least noticed. He was just the man to be selected for such business. He was poor and needy. From early life, until he sank into the grave, he had revelled in scenes of licentiousness and crime. His name was a terror even among evil doers; he was shunned by the good—feared by the bad—an outcast with the mark of Cain upon his forehead. Did any desire to do a deed like this, Gay was a tool ready made and fitted to his hand. As somebody caused the depot to be burned, it is easy to believe that he was the tool used to do it. But there is still another item of evidence coming close upon direct and positive proof. A match similar to the instrument, (as I will hereafter show) by which this arson could have been, and in every probability was accomplished, was seen in his house, and in his possession. If murder is committed by means of a subtle and before unknown poison—if similar poison is found in the possession of a depraved person, capable of the crime, who had an opportunity and a motive to do it, and no legitimate occasion for the drug, the proof is strong; there is little more needed for a legal, none for a moral conviction.—This is where we now find Gay; he could have done the deed; he was capable of it; a cunning, subtle instrument, well adapted to have accomplished it; and which is useless for any other purpose, is found in his possession. And you will bear in mind that it is not only Phelps and Lake, but also Clark and Van Arman, who prove Gay had a match. This is enough; but over and beyond it, you have the direct admission of Gay, made to the same witnesses. But you are told Gay was such a liar you could not believe him, even when he spoke the truth. You are told Gay is one of the witnesses for the prosecution. There is no attempt to explain how the *principal felon* is a witness for the prosecution. The defence give it to us as an axiom to be received, that Gay is a witness for the prosecution, and he is not to be believed. Gentlemen, I have heard some strong impeachments, as I have been through this cause, I need not tell you I have heard some very weak ones; but I never heard of a liar so great as not to be believed when he confessed his own crimes. But you are told these admissions should not be in evidence; and counsel with the tone of dignified and expressive indignation, desire that the extraordinary admission of these statements of Gay, may go forth to all the world. Let it

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be known to all courts and lawyers, every where and in all time to come!

> "He spoke, and awful bends his sable brows,
> Shakes his ambrosial curls, and gives the nod,
> The stamp of fate and sanction of the God;
> High heaven with trembling the dread signal took,
> And all Olympus to the centre shook."

As it has been sent forth thus, with high proclamation, I wish the explanation to follow that *they were received without objection* on the part of the defence. I confess I always had some shakings about these admissions, but they were taken without *objection*, and they were given to the jury, if as nothing else, as a theory; for over three months they have been before you; the prosecution closed their evidence and there was no motion to strike them out; the defence proceeded and closed, and still no motion. If they are there wrongfully whether as evidence or theory, the blame is not with us, and as it is clearly proven that they were made; and as it is manifest they are true, for no criminal, much less an old cunning and hardened one like Gay, confesses to crimes of which he is guiltless, you have only the truth and truth can work no injustice. But gentlemen, the case is equally strong without them. Many of the defendants have confessed the same and I will hereafter show you that these confessions are so proven that you must believe them.

But again, gentlemen, if Gay burned the depot according to the evidence and theory of the prosecution, he must have done it with a match similar to that which was described to him by the defendants. But the counsel tells you a match so made and constructed cannot be made to burn, and this is presented to you as a full and perfect defence in itself. To this important point in the case I now invite your attention. I will treat it fairly, and I feel assured, gentlemen, that a close and candid examination of the evidence pertaining to it, will convince you beyond the question of a doubt that a match so made and constructed will burn and is most fiendishly suited for the felonious purposes for which we allege it has been used by these defendants. I will not ask you too perceive that I hold one match in my right hand, and another in my left. I will not produce to you a pistol and demonstrate that it is intended *to shoot*, not to carry slow trains; I will not load one with cotton and invite you to fire it off; I will not produce a box of lucifer matches; I will not set fire to different pieces of cotton and ask you to look upon the smoke and inhale the odour: all this has been done by the learned counsel who has preceded me, and I am bound to admit, done with a grace and dexterity that might make Herr Alexander tremble for his laurels. I will perform no such experiments for you; they do not suit my taste, I doubt if they suit this place. I doubt if the counsel would have entered on their performance if he did not believe you were deeply impressed with the force of his quotation, "what we hear moves us less than what we see."

But gentlemen, even *it* does not hold good here, you are to be moved by what you hear. You hear the evidence, and if it come from a true and reliable source; you are to be moved by, and decide according to it. Such is your oath and so you will do. I do not, for a moment

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mean to impute to the distinguished counsel any thing unfair. I am satisfied that he intended to practice no deception upon you; high and honorable as he is, the learned counsel would never abuse the practice, but humble imitators led into error by an illustrious example may seek to deceive the judgment rather than lead it by those rules which the wise and learned have laid down as the safest and surest guides to truth. Gentlemen, you are bound to take the law from the court, because it is a science which it has studied and mastered, but with which you are not supposed to be familiar. So also, upon other matters of science and skill, with which it is true you may be but, with which you are not presumed to be familiar, you are bound to receive the opinion of experts; not draw conclusions from experiments which may, even without intention be made the instruments of error or deception.

I will now *discuss* the evidence upon this head. This course may prove less interesting; but it will better enable us to discharge our duties, and will, in the end, prove more satisfactory. I will first call your attention to the description of the match, in the testimony of Phelps. Speaking of his interview with Filley, at page 125, he says: "He described the match; said it was made of a block containing several holes lengthwise of the block, filled with combustible matter, and small holes in the centre, glazed or varnished, filled with turpentine, and sealed over, so when the fire was communicated through the holes or chimneys from the other end, it would melt the wax, and communicate with the turpentine."

As some question has arisen in relation to this portion of the testimony, and it has been differently stated to you, I will here ask the court to read to you that portion of Phelps' testimony, from his minutes.

[The court read from his minutes, and Mr. Van Dyke resumed.]

I am pleased to find, gentlemen, that the minutes taken by the court agree precisely with what I have read. We have got the description given of the match, and it only remains to inquire if a match made according to it, would burn and operate as we allege. We have shown you, by Dr. Desnoyers, that it would. It is conceded that the block used by Dr. Desnoyers, is identical with the one described to Phelps, and the one used at Niles; it is conceded that the match he prepared would and did burn; it is conceded that his match was made thus: the outer holes were filled with cotton, first steeped in a solution of saltpetre, and then dried—with a paper funnel running down the centre; and the centre and small holes, intended as a reservoir to contain the camphene, were lined with glue—this being done by the simple process of pouring the solution of glue in and out again. But the counsel for the defence tells you this is not according to the description; he objects to the glue and the saltpetre, and says the evidence of Phelps excludes them, and requires varnish and camphene in their stead. The prosecution concedes that a lining with varnish will not prevent the absorption of the camphene placed in the reservoir; and that cotton steeped in camphene will not answer for a slow match. But does the description given by Phelps, limit us to the use of these materials? Most certainly not. First, as to the cotton prepared with saltpetre. Is that a departure? He says, "*combustible matter;*" that is something easily sus-

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ceptible to fire. Does not cotton prepared in saltpetre conform to this requirement? Is it not "combustible matter?" If cotton steeped in camphene will not burn, *it* is excluded by the description; for Mr. Filley spoke of combustible matter that was tried; that *had* burned; and in the efficacy and certainty of which, he expressed unbounded confidence. The cotton, then, used by Dr. Desnoyers, conforms to the description.

But the counsel says there was a departure in lining with glue. Is this so? Does the description limit us to an experiment excluding glue? I think not gentlemen; in ordinary parlance the language is perfectly applicable to glueing; but if the language was ever so inapplicable, it would not still exclude it. What was the end which Filly said was to be attained by the glazing? you remember it without my referring to it; it was to prevent the camphine being absorbed by the wood; how ridiculous then it is to quibble upon the strict accuracy of Mr. Filley's language; what he meant by glazing or varnishing, and I do not care which word you adopt, was something that prevented the diminution of the camphine by absorption. If varnish being soluble in camphine, will not effect that purpose, then he did not mean varnish. Whether his language quite came up to the standard of scientific accuracy or not, he can settle with the distinguished Senator. He meant something that would effect the purpose, for he said it had been tested. To come within his description we must get something that will answer that purpose—varnish or anything else that falls short of that, falls short of what he described.

We are are not confined even to glue; we have only to show you that there is material by which the result can be obtained, and as Filley says, they did not obtain the result, you would be bound to presume that he used that material. How much stranger it is gentlemen, when we show you that glue, a common, cheap material, found in any house, used in the simplest manner, produces the desired effect. You see then that the match prepared by Dr. Desnoyers was made pursuant to the description given; it could not have been otherwise, for he was handed the testimony, and requested to guide his experiments entirely by it.

And now, gentlemen, let us see if that match would be an instrument well adapted to the purposes for which we charge it has been used. You have seen these matches; they are of rough, unfinished design. Dr. Desnoyers tells you, "All the materials used are common in drug stores in the country." Yet he, an eminent chemist, tells you, "For the purpose of burning, I could make no improvement save to line the tube with metal." All his skill, all the secrets of that science in which he has gained an enviable reputation, he tells you could furnish for the incendiary nothing more certain than this match which you are told by counsel is no more fitted for burning than a lump of ice. Dr. Desnoyers does not give you a hasty, inconsiderate opinion; he gives you the result of careful investigation and experiments, and tells you that for the theory relied on by this prosecution this instrument is perfect. Practical experience has brought it to the highest perfection. Skill and science might essay, but in vain to improve it. He tells you that even the common shoemakers' wax, he found upon

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experiment to be the best substance for covering the reservoirs of camphene;—his skill suggested other substances, but this he found the best of all. This match, then, is admirably adapted to produce a fire. Look at the testimony, and you will perceive that it is no less admirably adapted to guard the safety of the felon. It is small, light, easily carried, and easily concealed. Witnesses who were present at some of the experiments, describe its operation. Mr. Ledyard says: "After a little all appearance of fire or smoke disappeared, and if I had not been aware of it I would not notice there was any fire. As the fire burned through the tubes there was no smell or sign of fire. One of the holes was covered with wax, and after the fire burned through it melted, and camphene oozed through from the hole upon the shavings. Dr. Desnoyers was present. It was about 45 minutes from the time it was lighted till it burned through and fired the shavings." Mr. Larned says: "Several times we had supposed it had gone out, as there was no smoke at all; at the end of about 50 minutes it burned through to the end." Mr. Webster says: "While it was burning through there was no indication whatever of fire, and we supposed it had gone out, but on feeling found it hot."

Thus, you see, with a fearful instrument like this, the incendiary might go along unnoticed and unsuspected even while it was in his hands and consuming with its slow but certain fire. Mr. Ledyard tells you, "There was no smell or sign of fire." Mr. Larned tells you, "There was no smoke." All tell you there was no indication of fire; and yet in the face of testimony like this from a learned and able chemist and gentlemen of the highest respectability, counsel burns cotton on a table and asks you to view the smoke and inhale the smell. But the counsel says all else granted, "The match will not burn over an hour. Dr. Desnoyers' skill cannot carry him beyond that." Is this the testimony, gentlemen? You will remember that Dr. Desnoyers had but a short time to experiment in. Every person knows that in matters like this, complete success is the result of time and long continued experiments. But what does Dr. Desnoyes tell you? "I think it might be made to burn *three hours*." "I don't see how one could be made to burn forty-eight hours. I think to make one burn nine hours would be a doubtful experiment." "I have not carried my experiments far enough to state how long one might be made to burn."

You perceive, gentlemen, that Dr. Desnoyers has done little more than commence his experiments. He says in another place, "I did not try to make one burn over an hour and fifteen minutes. I did not push my experiments beyond that." And even while you hold in your hands testimony like this—while still fresh in your ears, the counsel tells you the skill of a chemist could not make it burn over an hour and ten minutes. The first objection made by the defence was that the match would not burn at all. That was all we had to meet. That was the extent of the proof required, but in almost his first experiments, Dr. Desnoyers finds that he can, by varying the strength of his solutions, graduate the match to burn at will, from five minutes to over an hour—he sees clearly that he could make it burn three hours; further he has not looked or tried to go. If such results as

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this attends the first efforts, can you assign the limits of nine, twelve, or twenty hours as inadmissible, by longer tubes or prolonged experiments? Again, gentlemen, you will remember that these defendants are not destitute of chemical science. There is among them a chemist of no mean attainments, Dr. Farnham, who, in other portions of the evidence, we find using his chemical knowledge for the ends of this combination, and experimenting on a composition to be used in blowing up the cars. Who can say how many months he spent in experimenting, befor he brought this match to its present state of perfection? This review of the evidence, gentlemen, must convince you that this ground of defence—"*the match would not burn*"—is utterly unsupported; the evidence answers it beyond all possibility of question. Before passing from this branch of the case, I must call your attention to the remarks of counsel in relation to the match which it was conceded did burn. You were told that this was "an after thought," "a subterfuge," "a studied and deliberate fraud on the part of the prosecution." Do such words drop becomingly from the lips of the distinguished counsel? Does he hope to blind you to the detected and exposed frauds attempted by the defence, by making wanton and utterly unfounded charges against the prosecution? In reference to this point of the case, "a studied and deliberate fraud" was attempted, but by whom? Call back the testimony to your minds, and you will readily answer, *by the defence*. To say so is painful to me—the words rise reluctantly to my lips, but they are true, and charged as the prosecution has been, in studied phrases, I must speak them. Was it not an attempt at fraud to prepare matches from cotton and camphene only? try experiments with them in a private office? bring half a dozen men—not a chemist among them—to swear to you they would not burn? represent that they were made in accordance with the description in evidence and exultingly exclaim and proclaim through the streets, that the pretended match was a farce? Was it not an attempt at fraud in the counsel, to tell you in his argument, that the evidence described the match as made from cotton steeped in camphene, and then dwell on the evidence that such would not burn? Where is the evidence describing the match as made with camphened cotton? Has the counsel referred you to it? Has he has even read it from his abstracts of evidence? Nothing of the kind. Not one solitary witness states anything of the kind. The counsel cannot now refer to it. You cannot find it in your books of evidence. I did expect that he would read some such evidence; that some mistake in his minutes had led him into the error; but there is not even that, he does not refer to a single passage, he does not name a single witness—*there is no such evidence.* Contrast this gentleman with the course of the prosecution. When the question was presented they did not try experimento upan false materials in a private closet, and bring men, who though highly respectable, were not chemists, to swear to the result. They at once went to the most eminent chemist in the State—a man, who even in youth, had stored his mind with the riches of science—handed him the testimony, asked him to ascertain if a match made according to that description would burn as stated, and without another word left him to his researches. They placed him an the stand, that

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he might explain the materials he used, that you might know if he had used any but the simplest, or which were not embraced in the description given, Was this subterfuge? Was this fraud? Has the prosecution stated to you evidence that does not exist, and then based an argument upon it? Has the prosecution misrepresented or suppressed testimony upon any point? The charge of fraud comes badly from the defence, and will re-act fearfully upon it.

The counsel tells you that the match, if placed in a close box, would be extinguished, and therefore Gay could not have carried it, as stated in a box. Doctor Desnoyers tells you: "If the match was placed in a tight box, the cotton might burn, but it would not set fire to the shavings." I now refer you to Gay's statement to Phelps, p. 10: "Gay reiterated his former story how he managed to fire the old depot. He went in while the hands were at work, went up stairs, and deposited the match in the cupola; placed the fire in the box before he left home, and when he left it, took off the cover."

You see, gentlemen, when we refer to the evidence *as it is*, we find that every point raised by the defense serves but to strengthen the prosecution, and bring forth the inherent evidences of truth contained in almost every sentence. On the very first day of the trial, before any one thought of saying the match would not burn, Phelps tells you that Gay carried the match in a box; but he removed the cover when he left it in the cupola. Three months afterwards, Doct. Desnoyers tells you that Gay might carry it lighted in a box; but if he desired it should fire the shavings when it burned through, he should have the cover removed and the air admitted. This, too, is drawn forth, not upon direct, but cross-examination; and I ask you, gentlemen, if in all your experience you ever witnessed so strong a confirmation of the truthfulness of a witness. In May, Phelps tells you the manner in which Gay fired the depot. Will it be said that he artfully added, "left it with the cover off," to meet this unanticipated defense? If he anticipated the difficulty, he would have avoided it, by leaving out all mention of the box; but he told just what he heard, and well for him he told all he heard. A sudden point is raised by the defense. Science is invoked, and by its light we read that while a portion of the sentence led him into difficulty, the remainder led him forth again. Again, you are shown the match delivered to burn at Niles, and told that the cotton it contains will not burn; there is no saltpetre in it; no trace of glue on the reservoirs. Again, the answer comes forth from the testimony, and brings with it new and striking evidences of its truthfulness. Mr. Clark tells you that when the fire at Niles was extinguished, the match was put in the river, and remained there all night. Now listen to Doct. Desnoyers: "If a match prepared as I prepared those used, was in water all night, it would after, show no sign of the preparation, either in the wood or the cotton; the glue and saltpetre would be extracted by the water." A full answer to the point, and more too, gentlemen; for it shows that the match delivered to burn at Niles, and which held camphene for a night and a day, as proven by Clark and Van Arman, must

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have been prepared in exactly the same manner as those experimented with by Dr. Desnoyers.

But the counsel says the cotton is not soiled by the water; and if the match was placed in the river all night, being light, it would float away. To these objections, the testimony furnishes me no answer. I will merely suggest that the pure limpid waters of the Niles river, are more adapted for cleansing than soiling; and that when Mr. Clark placed it in the river, intending to resume its possession when entirely extinguished, it is not quite impossible he conld have taken precautions against its floating away.

But the counsel says, although Phelps, Clark and Lake say this Niles match was ignited, and set fire to the shavings, there is no trace of fire on the cotton, or in the tube. Gentlemen, the evidence again answering, speaks also to the truthfulness of Phelps. You will remember that Phelps testified that before he set fire to the match at Niles, he poured two spoonfuls of camphene into it and then applied the match. Doct. Desnoyers says: "If camphene was poured round the touch-hole and fired, it would not show sign of fire in the tube." Camphene in the cotton, would prevent its burning while damp; but the camphene on the outside of the match, would of course blaze and set fire to the shavings in the box; and when they were extinguished, of course the cotton would show no sign of fire, which never communicated to it.

I will engage, at the proper time, gentlemen, to show you that Phelps' testimony must be true, but wish you here to note this. If Phelps was a false witness—if, as charged, the matches were his own fabrication, would he have sworn to you that he set fire to the Niles match, and yet produced it to you without a sign of fire within it? He wanted you to believe that he fired it; he wanted you to believe, that when fired, it would inevitably burn thro' the cotton in the tube; he might easily have singed a part of the cotton, but does not: he produces it to you without a sign of fire, without a word of explanation! Is it not again manifest that Phelps spoke the truth; that he was so *conscious* he did so, that he never even looked to see if the match he produced would corroborate or contradict his story? I am glad the defense were so ingenions about a match "not made according to the description;" for it called in the light of science and the result of experiments, without which, this Niles match would have been a stumbling block; but with which, it has become strong evidence of the truthfulness of Phelps.

But counsel exclaimed, here is the match that was found at Gay's, and which was given to burn the new depot; it has not been in the river, yet *it* wont burn—there is no saltpetre in *it*. I perceive that by the printed report of the testimony, gentlemen, it does not appear that the match found at Gay's, is a different one from that shown to Phelps, Clark and Van Arman, as the one with which he was to burn the new depot. This has doubtless led the counsel into his error. The printed report is in almost every particular perfectly reliable; its accuracy reflects great credit on the establishment that published it;

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but the occasional omission of words is almost unavoidable. I find by the minutes reported by counsel for the prosecution, that Phelps stated, on the first day, that the match found at Gay's house, (the one referred to by counsel,) was *not* the same shown him by Gay. As this is important, I will ask the court to read you their minutes.

(The court read from their minutes; and it appeared Phelps testified the match found was different from the one shown him.)

Mr. Van Dyke. You perceive then, gentlemen, that the match found at Gay's, is not the one with which the new depot was to be burned. It was in another connection argued by counsel, that as the match was not found at Gay's on the first search, nor until Phelps insisted on a second and more thorough search, Phelps himself placed it where found. Having the facts, gentlemen, it is for us now to draw the conclusions. As shown you by the counsel, during his experiments, the match found at Gay's, wont burn—the cotton is not prepared. I will, however, ask you to look at *that* match. You perceive that one of the fuse holes is burned to almost three times its original size, by repeated attempts to ignite the cotton; it was in this state when found. What is the inference? To my mind, it is plain, that old Gay was endeavoring to learn the secret, and that this was a match he got made to experiment upon. It is remarkable that although Gay showed the match to Phelps, Lake, Van Arman and Clark, he never told them a word of the material that composed it; he was sure it would burn; it had burned; but he never said a word as to the material of which it was made. When they had his confidence so fully, doubtless if he knew, he would have revealed the manner in which it was made. If Phelps was false, would he not have given the description as from Gay, as well as from Filley? We find Gay then possessed of the knowledge that these matches would burn, but ignorant of the manner of preparing them. Though cunning, he was illiterate. Dr. Desnoyers tells you, "when prepared with saltpetre, the cotton would show no sign of preparation to the eye." To Gay it would seem simple cotton. He was a hardened sinner—he loved crime for its profit, but he loved it for itself, too; any knowledge that could aid crime, was to him "great gain." And is it not almost certain that he would, under the circumstances, try to discover this secret, and experiment on simple, unprepared cotton? There is every thing to indicate this: the match in court was not the one received to burn; yet it is evident, that repeated attempts to fire it have been made. Either this theory, or the theory of the defense that Phelps made and placed it there, is the true one. Test the latter. If Phelps made it, he knew it would not burn; for whoever had it, tried to make it burn. Would Phelps, then, cause it to be found and bring it into court merely to stamp perjury on his testimony? He did not need its finding, to corroborate his testimony; for apart from Lake, Messrs. Van Arman and Clark saw the match at Gay's, and to find this one, was quite unnecessary. Phelps insists on the second search. If honest, this was natural: he would say, "I saw the match—it must be on his premises—a further search will find it." This is conduct consistent with the theory of his truth; but

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if he made the match, it was certainly taking very extra care to produce, what he knew when produced, would be a flat contradiction to his entire testimony.

I have now gentlemen, answered fully the first distinct defence upon which counsel relied. I hope I have kept my promise of answering it not by sophistry but by a candid examination of the testimony. I feel you must be satisfied that "this distinct defence" is entirely disposed of. Incidentally I have also done much, I trust to show you that Phelps is a truthful witness. If so I ask you to retain it in your minds. As anxious to be as brief as possible, I leave this part of the case and will not again return to it.

Without pausing to recapitulate at length you will perceive gentlemen, that the following points are now established. There was a combination among the defendants to injure the company, to if nessary for their ends burn the Detroit and other depots and that the Detroit depot was wilfully and maliciously burned by Gay, by means of one of these matches placed in the cupola.

I will now gentlemen call your attention to the "second defence" relied on by the counsel. It is by them insisted that the evidence in this case shows that the matches produced were made by Phelps and Lake. If this were so, while I do not see that it would cosntitute a full defence, I feel that it would be a strong and important point. But whether it would or not, bcomes quite immaterial as I will presently show you. There is nothing in the evidence upon which such an opinion can be based. As I review the argument of counsel on this head you will notice that it is constructed mostly upon inferences from *assumed* positions, which have been already overthrown. Thus he says, if the defendants made the matches, they made them to burn; if Phelps—he made them to deceive; then assumes that they will not burn and hence Phelps must have made them. But you have seen that the matches will burn; and you have seen none; you have seen Phelps, over anxious to make the one at Niles burn—poured Camphene in the fuse hole—did the very thing that would prevent it burning, and afterwards produced the matches with the cotton insinged! thus affording the most coclusive evidence that he was utterly ignorant of their qualities and operation. I need not demonstrate to you how powerfully the argument reacts. Again counsels says: By the evidence we first find the matches in the possession of Phelps, and until the contrary appears the law presumes the possessor the maker. If this were so, still, whenever Phelps has a match he accounts for the possession. You must take all his testimony or none; you cannot retain the portion of the sentence where he says, "I had a match" and reject the concluding portion where he says, "I received it from the defendants to burn the Niles depot." But again gentlemen, the statement of the evidence is incorrect; we do not find a match *first* in the possession of Phelps. The first time we trace the actual sight of a match is on page 129 where Phelps says that towards the end of January, Fitch showed him one in the small room at Filleys—the holes bored but not prepared for burning. This proves the match not in the pos-

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session of Phelps but in the possession of Fitch and Filley. Phelps also testifies that he saw the same match afterwards at the Centre; but I pass that by. The next place a match is seen, is at Gays', by Phelps in February, and by Phelps, Clark and Van Arman in April, not in the possession or under the control of Phelps or Lake, but of Gay who says he got it from "*his friends at the Centre.*" The next time a match is seen, is on the 11th April at the Centre when it is taken from the small room in Filleys and given by some of the defendants to Phelps and Lake to burn at Niles; and the next time an unprepared match is found under Gay's side walk—to this I have already adverted at length. Now I have given you all the testimony that exists on this head and what is the result. If you retain Phelps' testimony, the first match is seen in January, in the possession of Fitch and Filley. If you reject the testimony of Phelps and Lake then Clark and Van Arman show the first match in the possession of Gay the principal felon who says he received it from some of the defendants. Gentlemen it is a dangerous thing to base an elaborate argument upon a mistatement of evidence. But again the counsel says it is improbable defendants made them. If defendants made the matches, why have not some of the party confessed? why has not the material and tools for making them been found on some of their premises? and counsel gravely adds, thread, paper, and cotton, are used in the formation of the match, but there is no proof of any of these, not even a leaf of paper having been found in any of their houses. Gentlemen there is no proof of any search for such materials; even if search were made, and successfully, it would add nothing to the strength of the prosecution. What are the entire tools and materials necessary? augurs, a plane, thread, paper, cotton, shoemakers wax, and saltpeter; things found in the house of almost every farmer; every one of which are indispensable to a farmer who mends his wagons and cures his pork. The only place searched was Fitch's house and there the search was in a safe for papers; if it were for any thing else you can readily imagine, that the house and premises of an extensive and wealthy farmer, and a man of considerable public and private business were not destitute of paper, thread, and augurs, and even white wood, when we find that a fence of several hundred feet around his premises is partly made of it. But says the counsel, none of the defendants have confessed; if guilty, among so many some would confess. Gentlemen the prosecution has sought no confession, and even if it had, do the guilty always confess? sometimes they do; but do they always? It would be strange indeed to find them confessing, bound together as they were; associating in prison as they did; the younger and tenderer, constantly under the eye of the more hardened; and with learned counsel giving bold assurance of acxuittal even to the last. So far you perceive gentlemen the second distinct defence amounts to nothing: it fades away before testimony without the aid of argument scarcely needing even explanation. But gentlemen I regret that we have not yet done with this head. Much skill and labor has been expended upon it by counsel, an ingeneous theory with dim and

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distant views of evidence, has been presented, and it is my duty to follow the counsel through the entire of his argument. He tells you this match smells of state prison; that it was invented there while Phelps was an inmate and he must have learned its principle and knowing how to construct, he *probably made it.* The testimony upon this point is as follows; Phelps 145 says: "Never saw in or about the prison at Jackson, any machine or contrivance for burning buildings. Never had any knowledge of such a thing about the prison; think Mr. Titus told me a convict named Houghton, had made a brass canon, which he wanted him to take to Washington and get patented. Don't know that I ever had any definite description of the machine or canon.

Mr. Titus, the prison agnnt, says: "I remember a revolving cannon being constructed by Houghton; never knew of Phelps or Lake having anything to do with it: Houghton showed me a piece of wood and with his pencil showed me the principle: in looking over a patent report I found the principle had been patented: showed it to Houghton, and it was the last I heard of it."

This is the entire testimony, upon this point, and you see it repels all knowledge on the part of Phelps, of the State Prison invention, even if that invention at all resembled this match which is not shown; and yet on this you are gravely asked to presume that Phelps learned the act of making matches in prison, and continued to practice it when he left. To proceed. The counsel says before any match was seen by others than Phelps and Lake, they borrowed augers from Metcalf, which correspond with the size of the bores in the match; that upon their being borrowed Phelps takes his wife to Niles, leaving Lake alone in his house—that Metcalf called at the house, found Lake with closed doors; when he knocked, the door was only partially opened. Lake answered an inquiry and closed it again; that Cowdon also called, found Lake with closed doors, and working with saws, augers, planes and shavings, &c.—evidently making matches. Such gentlemen, as near as my memory serves is an outline of the imposing syoposis given of the testimony. I must again read you the testimony at some length, as I am sure the full testimony will be more satisfactory to you. There seems fearful secrecy in Phelps taking away his wife—not even she could be there; Lake must be left perfectly alone in the house. *You* will remember however, Phelps was going to Niles and his wife had a relation there whom she went to visit: but Lake was alone in the house with closed doors. This is explained by Mr. Phelps, who says: "The fastening to our door was a latch and thumb piece, which often fell out if the door was shut hard." And again, on cross examination, "when the thumb piece fell it fell outside." Nothing very wonderful then, in the fact that Mr. Metcalf found the door closed and Lake inside: but the counsel would have you believe that he half opened the door and was unwilling Metcalf should come in. Here is the testimony of Mr. Metcalf, an honest man, and I ask you does it convey any such impression? On direct examination he says: "Went to his house once to see Phelps in the spring: the thumb piece was out, and I

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knocked. Lake came tothe door, and told me that Phelps had gone to his father's, and I followed and overtook Phelps, and did my business with him."

On cross examination: "The day the thumb piece was gone, Lake came to the door and told me Phelps must be almost half way to the old gent.'s and I hallowed after Phelps. Lake opened the door about a foot—enough to put his head well out—I didn't ask or want to go in."

His business was to see Phelps. Phelps was then passing out of sight, and there was no great secrecy surely in Lake not insisting on Metcalf's entering when he dind'nt want to go in. But how account for borrowing the augers? Phelps, Lake and Mrs. Phelps all say the augers were borrowed to mend the buggy and returned the same morning—that old Mr. Metcalf himself took them back. Mrs. Phelps says: "I remember the wagon being broken, and Phelps sending Lake to Metcalf's to borrow augers to mend it; the springs were broken and he bored holes and tied it up; we went to Niles that day; Metcalf came there the same day and took the augers home; Phelps told him we were going away, and to take them home."

Now let us examine if there was great secrecy in the manner of getting the two augers. Was it designed or mere accident? Lake when recalled on the 30th of August, says: "Phelps once sent me and I borrowed some augers from Metcalf to mend his buggy. I told M. I did not know what size he wanted and he told me to take two or three—brought them to Phelps, he used them to mend the buggy—they were used for no other purpose. Am strongly of the impression that Metcalf took them home the same day."

Mr. Metcalf says: "I don't know how many augers I had at the time: I don't recollect that L. did not at first know which auger to take, but I may have said to him to take more."

Mr. Metcalf evidently remembers little beyond the mere fact that the augers were borrowed. At one time he thinks they were borrowed beforethe day he knocked at the door he tells you frankly that he may have said to Lake to "take two instead of one;" also, that, "he don't know if the augers were returned the same day they were borrowed." And yet, you are told this negative testimony—this I don't know—of Metcalf, must outweigh the affirmative testimony of these witnesses. We have still the testimony of General Heber Cowden; the gentleman who gets divorces without a witness, who saw Lake through a window on the north side of the house where you observe there was none, who saw Lake writing at a bureau, while Mr. Phelps and Mrs. Metcalf tell you there was no bureau there; and who saw the shavings, the augers, the baskets, the wood, almost the matches themselves. Far be it trom me to impute the least want of truth to the General. The brave are always truthful. He saw Lake through the side of a house where there was no window or crevice, and at a bureau when there was none. *Scarcely credible.* He saw planes augers and shavings. I will show that is scarcely credible. But the General is one of the keen sighted, described by Hudibras:

"He must have optics sharp, I ween,
Who sees what is not to be seen."

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He does not tally with the other facts and the theory of the defence. It was so necessary that Lake should be perfectly alone, that Phelps carries off his wife and child to Niles, and yet Lake carries on the deep mystery so unguardedly that every wandering vagrant who may happen to be strolling through the country, and every man who may wish to see Phelps at his house, has only to fling a peeping glance at the window as he goes by, and lo! the dread secret is discovered. You cannot forget the manner of this witness on the stand. His affected frankness, and yet his evident leaning for certain of the defendants; his unqualified certainty that there was a window on the north side of the house, through which he saw; his subsequent uncertainty of the same day: afterwards, his apparent confusion and manifest contradictions, would almost justify a suspicion that there were more here in the plot to charge these matches on to Phelps; then the tamarack witness from Indiana.

What a farce! all this secresy ends in this; the first stranger who comes along is freely, admitted to see the entire. Cowden says Lake informed him Phelps had gone to Niles, and the solution of all the General's blunders, is that he called the same day, while every thing was in confusion, and Lake himself preparing to depart; the disorder of the house shocked his military precision and confused his ideas and led him into a fourth error. Is not this a charitable if not the true solution? Lake, when last on the stand, tells you the day Phelps went to Niles, he left for Whittemore Lake, taking Phelps' horse and buggy with him and stayed until the day Phelps arranged to be home, some five or six days after. If this is true, it is absurd to prove that the augers were borrowed to make matches at Phelps, when there was no one there to use them. If untrue, how susceptible of disproof, for it would be impossible for Lake to have remained in the house and kept the horse and buggy during Phelps' absence, without the knowledge of the neighbors. The people at Whittemore Lake were also accessible, yet no attempt is made to disprove the truth of the statement that all the time Phelps was at Niles, Lake was at Whittemore Lake. The sum total, then, is this, there was no secresy, but sometimes the thumb-piece fell out; augers were borrowed, but to mend a buggy. If what has been said is not enough then I will ask you to look at the match and the augers, and as many of you are skilled in such matters, you will at once perceive that these old augers never could have bored the holes in the match: though the same size, they are old and worn and never could have been madato bore these holes. It would have required a different instrument—what is generally I believe, called a bit, to have effected the purpose.

But there was a piece of white wood, found by Fenn under the hay in Phelps' hovel. Whether a match could be made from it or not you can judge, and this was a portion of the inanimate nature, which was to speak so loud. I venture to believe you are satisfied the matches never came from it. The concentric rings won't agree. You have, by consent of parties, examined it for yourselves; but as to how it came in the manger I have a word to say. Fenn and Lappin

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went there at the request of one of the defendants, Burnett. They admit that, when he sent them, he seemed satisfied their toil would not be all in vain—with every assurance he gave the command, "search and ye shall find." Strange, too, these searchers go straight to the hovel and call for a fork. Stranger still, as Mr. Moses Metcalf tells us, he is a witness for the defence:

"*They seemed strongly impressed they would find somthing.* When he got the fork F. went right to the manger and in a few minutes found the timber. As soon as the fork struck, he said to the Dr., I *guess we have found it,* and he drew it out. I did not see what it was, when he spoke. I guess he did not search much after."

No, they thus find a piece of porous dry whitewood, which they say had lain, at least, three months in the wet yet heated hay—and still there is not a stain of a hairs thickness on it. Now, gentlemen, adopt for the moment the hypothesis that the defendants, or some officious friend, like Parson Billings, had placed it there—is not this precisely the manner in which it would be found? There would be a certainty felt that they would find. There would be an accurate knowledge of the spot to find in, and an assurance, when the fork struck, before even the hay was removed, that, "they had found it." Truly, gentlemen, "who hides finds." But Fenn and Lappin say they did not go direct to the hovel—they first examined carefully the threshing machine in the woods, while Alfred Metcalf was geting a fork—but, unfortunately, this does not agree with Metcalf, who says he went to get the fork and his father:

"My father was about sixteen rods off, but I did not go all the way to him. When I left I left them in the stable—perhaps I was away two or three minutes. While I was on the other side of the house I was out of sight of the stable. This was for part of the two or three minutes. I did not see them go to the woods. When I returned I supposed they were in the stable. I was two or four minutes gone. I went about eight rods and back. The threshing machine is about ten rods from the stable. They had not to my knowledge searched any place before turning out the hay."

Now, gentlemen, having seen that the manner of finding the block raises the idea that the block was placed there by some one at the instance of defendants—I will ask you if other facts, proven, do not repel the idea that it was placed there by Phelps? If he put it there it was to conceal it—yet goes off and leaves it to be discovered by the next occupant. But, not content with this imprudence, he takes measures to insure its being found, for Wm. Reynolds, a witness called to impeach Phelps, says:

"When he left Metcalf's he gave me some hay he left in the hovel—he came to me and told me I might have it. He so told me in April last."

You have no direct proof who placed the stick there. You are, from other facts, to infer whether it is more probable that Phelps or the defendants placed it there. You have the facts and I leave you to draw the inference—regretting, however, that you have been

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denied the evidence of Cooper, which would so materially aid you.

In relation to cattle guards much has been said. I do not feel at liberty to trespass on your time by discussing a matter that the evidence has made so plain. The defence introduced many witnesses to prove that a cattle guard was broken and left at a crossing near Phelps' house, some of whom said that the block in question might be a portion of it; but H. H. Bingham and Wm. Wycoff, whose testimony you will remember, and who had charge of that portion of the road and passed over it twice a day, prove these witnesses must have been missaken, that there was no broken guard left there, that the only broken guard for miles along there, was one at another place, given to and taken away by another person. One word as to the testimony of Stow. He states that on the evening of the tenth of April Phelps went to the hovel and he, from the gate on the roadside; saw him through an opening in the side of the building bending over the manger. The design of this proof is manifest—it is to imply that Phelps had the Niles match concealed there and went to take it away. Whether this witness is mistaken or has sworn falsely is a matter of indifference to the prosecution; that this testimony is not true, is obvious. That Phelps, after he left the premises and another occupant had entered, would conceal a match in the manger of an open hovel, is too absurd to impose on the most credulous. And, in addition to this, their own witness, Alfred Metcalf, proves that, at the time stated by Stow, that opening was covered by a buggy shed, which would, of course, prevent the possibility of Stow seeing as stated. It is on a par with General Cowden seeing through the side of a house.

I have now, gentlemen, reviewed the "second perfect defence." You see what it amounts to—that there is not a scintilla of evidence to sustain it—that it has literally no foundation in the case. For anything that appears in evidence there is just as much probability that you made the match as that Phelps made it. One word, in reference to Lake, and then I leave this "second defence" to your consideration. The learned counsel has, all through this branch of his argument, spoken of Lake as an "engineer," "a cunning worker in wood." You will not be misled by these terms. There is no evidence that Lake is either an engineer or worker in wood. Gentlemen, as the testimony of the witness, Henry Phelps, is closely interwoven with such portions of the case as yet remain to be to considered, and inasmuch as the chief strength of the defence has been put forth to impair it, it is proper that I should now advert to him, his position before you and the grounds upon which you are required to withhold credence from him—for you will not have failed to, perceive that, before asking you to rely on the testimoy of any witness I have shown you that he was unassailed or that though assailed, he was still entitled to be believed.

You have listened to the bitter, I will not say fiendish, tirade which counsel have deemed it expedient to indulge in against this witness I concede to the advocate the duty of probing to the quick the tale

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he deems false, and the motive he thinks corrupt. I concede the necessity of his laying bare to the gaze of the jury and the world, the weakness of the evidence, and the mistakes or perjury of the witness. And when founded in fairness and justice, the earnest and truthful exposure will make the lieing witness to tremble and shrink before the indignant voice of justice. But if counsel deem it their privilege to wander from the truth—to conjure up from bilious fancy, or gather from malignant foes, details of crime not in evidence, in the hope of blasting the reputation and wounding the feelings of a witness; if they suppose, that blessed with wealth and honor; standing in pride of place—"the glass of fashion and the mould of form," it is within their province to trample on the humble—point the finger of derision at his poverty—ridicule the features his Maker has given him—and as if all this would not make his flesh quiver enough, tell him of his dead children in the presence of their living mother, then the counsel who have done all this, and more, stand justified before you. But if fair men turn with distaste from rank injustice—if they discover that the picture is the mere offspring of excited hate, and shrink from its deformities, let not the artists complain of the reaction, or affect surprise at the scorn which consigns their master-piece to fester in unenvied notoriety.

I declare to you, gentlemen, that the biography presented by the counsel who last addressed you, of the witness Phelps, is unwarranted by the facts before you, and discolored all over by the spirit and breath of calumny. I dislike to have to say that the assertions of counsel are untrue; yet I must negate them when not sustained by testimony. Time does not suffice to state them upon this head at length or in number; but I submit to you that no more garbled and unfair representation has ever been made from testimony, than in this particular. It is *not* true that "Phelps went to Michigan Centre and bought a distillery and its stock, with drafts on a person who never could be found." It is *not* true that after removing to Milford, "his stock of goods was suddenly and mysteriously surrendered to the merchants at Buffalo." It is *not* true that his affidavits were questioned; his art in conducting trials questioned, or that "his reputation waned." But why follow out this miserable policy of trying to mislead an intelligent jury by infusing unwarranted prejudices, instead of convincing their judgment by truth and reason. The facts are, so far as we know from the evidence, that Phelps was born of decent parents; received an ordinary education; and came to Michigan, in early life, with an unblemished name; that kindly manners, fair ability and good habits, gained him friends and influence; that his energy, activity, and kind of business, did sometimes bring him into collision with others, and woke up unkindly feelings; but that, until the unfortunate event which led to his conviction of crime, there is no good cause shown for us to believe that his name had become blighted, or his character for truth suspected.

He was charged with larceny. He protested his innocence. He was tried, condemned, and sentenced. Through all the long endurance of his imprisoned years, he yielded respectfully to discipline;

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gained the good will of his superiors; still averred his entire innocence; and finally, on an investigation of his case, was freely pardoned by the appropriate power.

If he sinned, most grievously did he expiate it. For years, he was shut out from the green earth, from society, from home and wife and child; from all that makes life desirable, to suffer amid gloom and sorrow.

But the hour of grace came at last; one daylight streak broke from the long dark night, and the ransomed prisoner came forth, once more to look out on this beauteous earth. He turned to no haunted recesses of vice; he joined no wicked band; he participated in no licentious revels. He hastened, rapid as weary limb would bear him, to wife and child. He arrived at the door of his long lost home, travel-stained and worn, and oh! how must the weary pilgrim have felt as the blessed sight grew visible before his ardent vision; the threshhold was crossed; his wife was in his arms; the bitter memory of infamy, the dark sorrows and sufferings of years were lost and vanished in hallowed joy, renewed hope, and united affection.

God's benison on the true woman, who, amid the scoffs of the world—amid its bitterest visitations and severest fates—amid absence and all that tries the soul and wrinkles the brow, proves true to the husband of her better years. Nor can I believe that he who excited such affection—who thus hastened to a virtuous home—and who for years afterwards remained true to it, can be all evil.

As for Henry Phelps, I will show you shortly that he is uncontradicted in any material respect; that he is not successfully impeached—that he is well sustained—that his story is natural, truthful, corroborated and marked all over with the evidences of inherent truth. For the present I beg to submit to you in all candor, that the attack upon his life, his family, his features and affections, is one of those bad mistakes which seldom emanate from any but a desperate and bad defence.

You are told that Phelps is not to be believed because he is impeached. Is he impeached? One hundred and twenty-four witnesses were placed upon the stand, for the purpose of impeaching him, but *did* their evidence amount to an impeachment? I will ask the court to charge you, and I have no doubt they will charge you that impeachment cannot be based upon the knowledge of the impeaching witnesses as to any distinct untruth—nor upon any particular transactions—nor upon character and reputation for anything but truth and veracity—that the reputation of the man impeached must be so notorious as to be the general belief of his neighbors and associates. Anything short of this falls short of impeachment. One hundred and twenty-four witnesses were sworn to this point; it would be an endless task—an unpardonable trespass on your time to attempt to review their testimony. I do not believe that the case requires it—but I ask you gentlemen to recall the impression made upon your minds during the examination of these witnesses. I ask you in all candor, if in the entire one hundred and twenty-four, there were a dozen exceptions to the rule, that each examination was a

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farce. One witness impeached him because he believed he feigned sickness to avoid labor; another because his heart told him not to believe a man who had been in State Prison; another, because he had for ten years judged character by the face—he was a practicle physiognomist, and Phelps' countenance strikes him unfavorably. Were not these things so? Did you not feel during its continuance that the impeachment was ridiculous? If you felt so then when the testimony was fresh and clear in your minds—when the manner and demeanor of each witness was before you, why not feel so now? Nothing has occurred to give to the impeachment a valadity that it did not then possess. I will however present to you a table of those witnesses; I will not call it a perfectly impartial one, because it is not—it is made more favorable to the impeachment than to the prosecution. You will remember that Phelps was over four years in State Prison—he was pardoned—went to the neighborhood of Sylvan and Sharon and resided there for over two years/prior to the commencement of these proceeding—although he went to prison wrongfully, although he was pardoned on the ground of wrongful conviction—still he was from prison—suspicions would hang darkly around him—apparent deviations from truth and probity which would pass unheeded in others, in him would swell into grave indications of depravity;—his was not the task of *preserving* a good reputation—he had to make one in the teeth of general prejudice. If, under such circumstances his truthfulness remained unquestioned for two years by the generality of his neighbors, you will admit he did much—that his walk in life must have been correct—that his character for truth must have been good. If there were during those two years but five men who had intimated ought against his truth, it would have run like wild fire through that community—man, woman and child would have heard it. The Court will, I have no doubt, instruct you that character spoken of since the commencement of this trial and growing out of his evidence in it, is to be disregarded,— a wise rule which prevents the perversion of justice by creating false reputation to destroy the testimony of witnesses.

Now gentlemen, out of the 124 witnesses, the learned counsel admits there are but 27 who speak of his reputation since coming from prison, and before these arrests: by every rule of law and by every rule of sense, this is no impeachment—out of an entire neighborhood every man in which all seem willing to hound this witness on to infamy—124 of the most available are selected, and only 27 pretend that during these two years, his truth was ever questioned. They have brought all they could—every living man—from the man who would impeach for feigning sickness down to the man who impeached upon view of faces—every one that could breathe a word against Phelps, was here—townships and counties were ransacked, 124 were all who could be found willing to say a word against him, and of these only twenty-seven could come to the point. Gentlemen, I ask you can twenty-seven men under the circumstances in which they testify make a reputation,—is character so light a thing that it can thus be blown away? The counsel felt that his impeachment was a failure;

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that it was not a legal impeachment, and although a lawyer he told you that the rest proved he was guilty or suspected of stealing wheat, horses, &c. &c., and forgetting that you were sworn to go by legal rules, claimed that these illegally formed opiniohs should weigh with you. Gentlemen, one word, as to the reason and wisdom of the rule you are asked to disregard. If it were allowed to impeach a witness because he was suspected or charged with offences—justice would require that he should be permitted to show the charges and suspicions unfounded; and in each case jurors would have to try not one, but one thousand issues; the wheels of justice would be clogged; causes could never be tried, or else all other business should be abandoned—the whole community being necessary to dispose of them. You see the wisdom and necessity of the rule. Now let us look to the fairness and justice of the counsel's request, that in this case you should give weight to the witnesses who impeached Phelps and on cross examination, showed they did so because he was accused or suspected of offences. You will find that six of the witnesses based their impeachment solely on rumors that Phelps stole Orman Clark's horses—twelve others entirely on rumors that he stole Butterfield's wheat—six others on the fact that he travelled from place to place without knowing of any particular business he had for so doing—three upon rumor that he pretended to own land in Oakland County, and eight on rumor that he falsely pretended to have money to lend; there are plenty others of the same character, but these are enough to illustrate by. The prosecution stood prepared to prove these rumors unfounded—to prove Phelps stole neither horses or wheat—that he had land in Oakland county, &c. &c. On the 11th August we placed Mr. Orman Clark on the stand' and asked him if Phelps had stolen his horses, or if he ever suspected or accused him of it. Was the question put? No! Mr. Seward the counsel for the defendants who urged you to consider that if their witnesses failed to impeach Phelps for truth and veracity—they at least had shown you that he was suspected of stealing horses, and that ought to do against his credit—this same identical and learned counsel objected, and the Court very properly held—that it was "true Drew (an impeaching witness) stated so, but as it was immaterial and not propper grounds to form an opinion as to truth, the testimony cannot be received. The testimony of Drew on this point being immaterial and irrelevant."

You willl admit, then gentlemen, that there is candor and fairness in asking you to weigh against Phelps' truth, the proof that he stole horses! Shall I proceed with the investigation of this impeaching testimony? I do not believe it is necessary. If you think it is worth explaining, you will find that the 27—the choice spirits who came up to the sticking Point, in almost every instance, admit disputes with Phelps and show themselves his bitter enemies. Get the 27, and it will recall the words so often sung in your ears—"Godfrey told me;" "Stevenson told me." You will also remember that not a witness could state a single offence or immoral act done by Phelps since leaving prison; here we had over one hundred of his

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neighbors, selected as the ones who hated him, who would blast his reputation and place the brand of liar on his forehead if they dare; yet not one of them ever knew of his doing an illegal act or even an immoral one. A. says B. told him he heard and B. says A. told him back again, but not one says I knew he did it, and the witness who is on the stand to day "I knew he did not do it" is prevented by the counsel. Gentlemen, if the prosecution insisted upon the strict rule of law, not 20 of these 124 witnesses could have testified at all. But Phelps was a stranger to us; the defence said he was a bad man. If he was such we wished you should know it; he was an important witness in an important cause, and we wished that you should see him as he was. In your hearing we told the defence that we would not hedge them even by legal rules; that in this instance, we would waive our rights, throw down the barriers, and let them follow Phelps' reputation at all times, and in all places, to the fullest extent; they availed themselves of the permission. Their witnesses proved to you that it was *rumored* he stole horses; then they put up the bars (it was their *legal* right to do so) and we could not prove the rumor false. Yet they tell you that the prosecution has been harsh and oppressive.

One word gentlemen as to the witnesses who sustain Phelps the counsel stated them at 118 they are only 101. You are told they amount to nothing. I will not trespass on your time, in reference to them; most of them are men known to you; all of them are men of standing and respectability; you are told they admit that they know nothing of his reputation. This is extracted from the expression they all use that they never heard his truth questioned; the best evidence that it was good. Is there one among them who was not acquainted with Phelps' neighbors or associates? Is there one among them who does not tell you that from acquaintance with the neighbors and associates of Phelps, and the people he did business with, they would know if his reputation was bad? Not one, such was the first question put; unless answered in the affirmative they could not testify, and you will remember that others were called, but the prosecution declined to examine those who said they knew Phelps' associates but slightly; none were examined but those who could say they had means of information; men like Nathan Pierce who said he knew his neighbors; he had seen him at justice courts, heard him sworn as a witness, but never heard his truth questioned; like the Rev, Mr. Moulton, who says: "I am acquainted thro' the whole township;" like Wines who says: "I am well acquainted with the people in the Metcalf neighborhood;" like Sutherland who says he "did work for Phelps, and before giving credit, &c. inquired among his neighbors if he was a man who would do as he agreed &c.;" like Wm. Sprague who gave him a Captains commission but before doing so inquired as to his character, and says: "My object was to find if he could be relied upon as to statements he would make, and if he was suitable for the commsision;" like Rev. Mr. Madison who says: "I was among those who knew P. and heard him frequently spoken of, had an opportunity of knowing his reputation

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there, never heard anything against his truth, would believe him, &c;" like Mallon Wines who says: "I knew P. in Sylvan, and knew most of his neighbors, well known through the town, sometimes thought I knew every man in the town, supposed his reputation for truth good, never heard it questioned till those arrests, would believe, &c."

I will not proceed—you will remember, gentlemen, that these are not selections, but fair specimens of the 101 witnesses whom, I am told, knew nothing of Phelps, and whose evidence is worthless. The counsel dwelt upon his reputation in prison, but you heard Mr. Titus, the agent, testify he was one of the most reliable men there. You heard Dr. Mowrey say he was on a prison committee, and inquired as to Phelps' character and conduct there, and found it so good he joined in the effort to procure his pardon. Before leaving this branch of the case, justice to the absent requires I should call your attention to one remark of the counsel—it may also serve to illustrate the fairness and candor with which he treats testimony. He told you, alluding to the sustaining witnesses, that (I use his very words):

"One, Samuel Chadwick, says that he himself took his neighbor's watch clandestinely, and wore it until it was advertised and then delivered it up and demanded ten dollars, upon the false pretence that he had paid that money to reclaim it."

A serious charge to make against a witness, a fearful one if it is falsely made, and against an honest man. The testimony of Mr. Chadwick, upon which this charge is made, is:

"Mr. Merriman lost a watch in Jackson. I took it as a matter of joke between him and me, and came to Detroit for two or three days; when I returned I gave the watch to him. I did not tell him how I got it. I told him a man in Detroit gave it to me. Don't remember telling him I gave, or that the man in Detroit wanted $10 for it. Don't recollect telling him so, but won't swear I did not. He did not give me ten dollars. I didn't get the watch from a man in Detroit.

I am very intimate with Merriman and others, and it is common for us to take each other's kerchiefs and things for joke. It was thus I took the watch. I intended returning it at once, but business called me suddenly to Detroit, and while I was away he offered a reward, and when I returned I went to his store and gave it to him, saying a negro in Detroit gave it to me. He is now my family physician, and we continue on good terms. I took it merely as a joke. Others have taken things from in a similar manner and returned them."

I regret to detain you reading this testimony; but charaeter is a precious jewel. It was due to Mr. Chadwick, that as you heard the charge, you should hear the basis upon which it was made. I leave it to you to judge whether the counsel acted well or wisely in making this charge.

I have now done with the impeachment. I feel that as you consider the testimony on both sides of this question, you will come to the

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same conclusion that I have—that the character of the witness rises from it, not weakened but strengthened. How few characters could have passed through such an ordeal, and come forth so slightly impaired. For weeks, agents have been scouring the country; whole families and neighborhoods have been brought here; the man who could say a word against Phelps—who could breath a suspicion on his fame, stood at a premium. No cost or effort was spared to procure him. And the result is, 27 enemies come upon the stand and say, from what they have heard, mostly each from the other, they would not believe him; 93 other enemies swear they would not believe him, but have no receivable reason for so saying; and 100 good and reliable citizens—men who know Phelps, and know what has generally been said of him, say they would believe him; his truth has never been questioned. I thank the gentlemen for entering on this field of inqutry; it has established the truthful character of Phelps; it has shown it so strong that ingenuity, activity, diligence, industry, perseverance, money, all united, could not destroy it.

But the counsel tells you if Phelps is not impeached, still you are not to believe him, for he is contradicted in several material points. It now becomes my duty, gentlemen, to show you that Phelps is not successfully contradicted in a single material point. I believe gentlemen, that I can show you by fair investigation of the testimony that he is not contradicted on *any* point. I feel certain that not I, but the evidence will convince you that despite the extraordinary and desperate means resorted to, he remains entirely uncontradicted or abundantly sustained as to every material thing he has testified to. It is my intention gentlemen, to take up and discuss every single contradiction of Phelps, which is alleged to exist. I will not take merely those which are most easily answered. I will refer to them all. I will show that in such as are material, he is altogether uncontradicted, or that there are such inherent evidences or corroborations of his truth that you cannot choose but believe him.

1. The learned counsel tells you that Phelps says he met Fitch in Jackson the day before Christmas, and at his request went the next (Christmas) day to the Centre; but that other witnesses prove clearly that Fitch was not in Jackson the day before Christmas. We admit that this is proven, but still there is no contradiction of Phelps; simply because Phelps does not swear as counsel says he does, and the contradiction springs not from evidence, but from a (perhaps unintentional) misrepresentation of it. I do not ask you to take my word for this, though I do trust that the candor I have heretofore evinced, would entitle it to some weight. I refer you to the testimony of Phelps p. 125, which says:

"Saw him (Fitch) next in about a week, on a Monday at Jackson, in front of Holden's hat store; had but little talk there. He told me the "boys" were going to be at the Centre the next day, and I had better be there; think he said he could'nt be there himself; told him I would go down, and did go." Again at p. 160, he says:

"I cannot say whether it was the Monday before or the day before Christmas; can't say positively what day Christmas came on, but think it was Wednesday; am sure it was Monday I saw Fitch, and that I

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went to the Centre, Christmas; but I don't know if Christmas was on Tuesday or Wednesday."

A reference to an almanac will show you that Chistmas day was Wednesday, so that, instead of swearing he saw him the day before Christmas, the witness swears he saw him the day *but one* before Christmas, and swears further that Fitch then told him he was to be from home on Christmas day, a fact subsequently proven. *Contradictions(?)* like this, solemnly announced, must react fearfully upon the defence. This *one* is a strong corroboration. How could Phelps know Fitch was to be from home on Christmas day? Phelps tells you he made written reports after each interview, to the agents of the Company. Why did they not call for the report of that interview, and see if he reported the Monday before Christmas that Fitch was to be from home; why did they not even ask to see the diary he had in court, and in which he said every particular was entered as it occurred?

2. The counsel says that Phelps testifies to Willard Champlin's having gone to G. Filleys, and there made certain admissions; and that Hart Holmes proves that Champlin did not go to G. Filleys on that occasion. But, gentlemen, by referring to the testimony of Phelps, p. 130, you will perceive he speaks of an occurrence about the time he came to Detroit. (12th February.) Turn to Hart Holmes' testimony, and you find that he speaks of a period in March; again the time Phelps speaks of, they went to avoid some persons looking for stolen property; but turn to Hart Holmes, and you find he speaks of an occasion when they went to a ball. This contradiction then vanishes, not before sophistry, but before the reading of the testimony.

3. The counsel says that Phelps could not have had the interviews he states with Fitch on the day of the 12th at the depot on his arrival and on the next day, when they spoke about fish. In reference to the first interview, they rely on Holden, whose testimony I have already referred to in connection with Wescott. You will remember that Holden merely says that after he got his valise he went to tne hotel across the street and thinks he saw Fitch immediately after getting into the hotel. There is no evidence of how long he took, amid the crowd and hurry of the passengers, in getting his valise, or how long he may have been in the hotel before meeting Fitch—while, on the other hand, Wescott and Mr. Doane, p. 121, prove that Fitch was at the depot the night Phelps got in, that he said he was waiting for some person, and that after the arrival of the cars they saw him speaking with some person. Doane says he cannot tell if it was Phelps, as he does not know Phelps. There is no doubt, then, of this interview; and though the counsel says the person he was waiting for was I. R. Brown, there is no evidence of it. On the contrary, there is conclusive presumption against it, for on the 17th July the defence swore I. R. Brown to another point, but never asked him if he came to Detroit in February. Never asked him if he had agreed to meet Fitch here. If the fact counsel states to you is true—if Mr. Fitch was thus waiting for Brown—Brown came on the stand, and why did not they prove it?—In reference to the second interview, Phelps—p. 131—says:

(Here counsel read the testimony.)

And Mr. Sheeley, at p. 157, says.

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(Here counsel read the testimony of Mr. Sheeley.)

I now ask you, gentlemen, if in all your experience you ever knew of a stronger corroboration? Is it a got up corroboration? Mark the words of Mr, Sheeley. After testifying, as I have read to the same conversation as Phelps—"I left them talking, and heard this conversation as I passed them; I never told of this or thought of it afterwards, until Phelps appeared before the grand jury, which brought the subject to my memory; I was a member of the grand jury; I think the shabby dressed man had his pantaloons in the tops of his boots; wore a cap, and I think had an overcoat."

The conversation about fish might be trivial—if so, it only shows that Phelps tells all—not merely what he deems important, but all even down to the lightest minutiæ—a feature that always characterises the evidence of a truthful witness, but is never seen in that of a false one. Truth is not easily impeached. We find that while Phelps by the fulness of his details exposes himself to numberless contradictions, instead of contradictions, corroborations spring up around every line of his testimony. They come even from the grand Jury room.

The counsel in his argument relied on the testimony of the other Mr. Brown that at or near the same place he also asked Mr. Fitch about fish, and implying that this was the conversation Mr. Sheeley heard. I was somewhat surprised at this; doubtless, gentlemen, you also were, for apart from the fact that Mr. Sheeley recognised both Fitch and Phelps you will remember Mr. Howard for the defence stopped the further examination of Mr. Brown by saying they did not claim that to be the conversation alluded to by Mr. Sheeley.

But the counsel tells you Fitch came to Detroit on business for Mr. Collier, and truly Mr. Collier did prove that; but yet there is something so remarkable in the evidence of Mr. Collier that I must ask you to listen to it. He says: "I did employ him to come to Detroit. I set no time for his coming, but he said he would come in one or two weeks. I wished him to come to make some investigation as to the origin of the fire in the depot at Detroit, and to see persons employed from his neighborhood who were in the employ of the company, among others Josiah Wells and Caswell, and others were mentioned whom he said he was acquainted with it, and who were at work for the company. My object was, I wished to recover from the railroad company pay for goods burned in the depot. I had goods burned in the depot. When I left home I had no idea of employing Fitch, but after I saw him I concluded to employ him. I left home with the intention of seeing Fitch on that business, and for no other purpose. When I left home I did not intend employing Fitch. I never met him before that time."

If the prosecution had known of this testimony, they would certainly have introduced it. It strongly corroborates the entire theory of the prosecution. How came Mr. Collier, an entire stranger, to go and consult Fitch about the fire? After he saw him, how came he to send him here to investigate? Was a "country gentleman," living seventy miles from Detroit, the person likely to be employed on such business by a stranger? No. But when Collier saw him and learned his intimacy with Wells and Caswell, employees of the company, he employed him. You will remember that the defence has all through

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disclaimed any particular intimacy between Wells, Caswell and Fitch; yet from their own witnesses we find Fitch procuring employment, to bring him around the depot, upon the ground of his intimacy and influence with them. How perfectly this evidence harmonizes with Phelps' testimony. If it is true, how natural it would be for Fitch to seek some business that would give him a legitimate excuse to see these persons and go about the depot? If it is untrue, how improbable it seems that Fitch would *seek* such employment, yet he did seek it, for till Collier saw him, he had no idea of employing Fitch. I do not claim that this is "conclusive," but I do claim, gentlemen, that the testimony of their own witness is more consistent with the theory of the prosecution than any of the many theories of the defence.

4. The counsel tells you Phelps says a certain conversation between himself, Corwin, Freeland, and Williams, at Coykendall's was interrupted by High saying, "boys what's the privacy?" High proves that he has no recollection of it. Stid also says *he did not see* Phelps at Leoni on the day of a horse trade, which is said to be the day referred to by Phelps, and so far there *seems* to be a contradiction. But is there such? If the thing is untrue how grossly improbable that Phelps would have said the conversation was interrupted by High, not a Def't, and who could be a witness; if false what need to say they were interrupted at all? how ridiculous to think he would name the person and furnish a witness to impeach himself. Nothing is more likely than that High would so interrupt a conversation at a public tavern and forget it. What was to fix it in his memory? A mere passing remark. Not so with Phelps; he was keeping a regular diary—the details of every occurrence he has given, show how full and accurate a one; every trivial thing was fixed in his memory. It is almost as absurd to suppose that High could remember a common place remark made over six months ago, as to suppose that a man like Phelps would voluntarily furnish a witness, who if he were false would unquestionably prove him so.

5. At page 128 Phelps narrates the substance of an interview between himself and Fitch at the Centre as follows:

[Here counsel read the testimony.]

It is claimed that Wm. B. Laycock disproves the possibility of this conversation having taken place.

Here is the testimony of Laycock,

[Here the counsel read the testimony.]

You perceive gentlemen, that the two witnesses agree in many essential particulars. They agree as to an interview, and the time and place of its occurrence. They agree as to the persons present, Phelps, Fitch, Filley, Ackerson and Laycock. Both agree that there was a good deal of conversation between Phelps and Fitch about buying and selling the oxen; the only pretence of a contradiction is that Phelps says they spoke of the Niles affair and the burning at Detroit, and Laycock says he did not hear this and that he heard all the conversation. There is no pretence that W. B. Laycock ever belonged to the combination, therefore if such conversation did occur he would not be permitted to hear it. That is certain. According to Phelps, he and Fitch had agreed on $200 for burning the depot; the only thing remaining

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to be settled between them was how much should be allowed for the cattle. Fitch asking $160, Phelps first insisting on $100 and afterwards offering to allow $120. At page 143 Phelps says, they spoke about the cattle in the ball alley "and afterwards had some loud or public talk about the price of the cattle but not in connection with the Niles affair." Is not this natural? Is it not the way in which the conversetion would be conducted? Of the Niles affair and the old burning; of every thing criminal they would speak privately, but, as to the mere price of the oxen there was nothing to prevent their speaking aloud. It is manifest then that if the conversation did occur as Phelps states Laycock's testimony would be just what it is. He would hear them chaffer about the price of the cattle, but would hear nothing of the criminal consideration. The only question is, can you rely on Laycock's testimony that he heard *every word* that passed? Laycock tells you "he was no way interested in the trade;" that they were 15 or 20 minutes in the ball alley; and 15 or 20 in the bar room after Fitch came: they moved from one place to another; the cars passed while they were there, and he went out to hold his horse; there was also some drinking; and yet without paying particular attention or anything to require him to do so, he tells you he heard every word that passed. He did not even join in the conversation. According to all ordinary experience the testimeny of Laycock is more a corroboration than a contradiction, for it is just such testimony as he would give if Phelps is true; but over and beyond all this, why should Phelps invent this tale? it is quite unnecessary; it implicates no one but Fitch, and Fitch is fully identified and implicated in half a dozen other interviews both by Phelps and Lake. Again Loycock says, "he heard every work spoken and has repeated all," yet all he repeats does not occupy over a minute in the delivery, and Phelps and Fitch were there over half an hour. Laycock may after six months imagine he heard all, and probably did hear all that was not spoken privately or in a low tone.

6. Ulysses T. Foster testifies that in the State Prison, in 1849, Phelps (pointing to Fitch, who was passing by) said: "He is the means of my being here; I will have revenge or satisfaction." Calvin Beebe says that in April, 1849, when he announced to Phelps that a pardon had been granted to him, he replied: "I am in prison through the influence of Abel F. Fitch and others. If I live to get out, I'll make them smart for it, and give them the same feed they have given me."

Phelps said he did not recollect using this language; and we must meet it as we best can. I have not yet, and I will not now, seek to shake any testimony by charges, unless when I believe them well founded. I know of nothing against either Beebe or Foster. I see no reason why you should not credit their testimony. But it is remarkable, and I beg of you to note it gentlemen, that altho.' by the course of examination you were given to understand that Phelps would be contradicted in *material matters*, relative to which he could not be mistaken or forgetful, the contradicting witnesses were never called, or when called the transparent falsity of their testimony, worked evil not good for the defence. To these matters I will have to call your attention at the proper time; at present I have to deal with the testimony of Foster and Beebe; and show you that much as it has been harped up-

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on it amounts to but little or nothing. It is material only as indicating malice or want of truthfulness in Phelps. If the words were the ebullition of sudden feeling, passing away leaving no festering malice behind, and *forgotten* when they passed from the lips that uttered them, they are utterly immaterial—divested of malice they are immaterial of thtmselves—*forgotten* there is no want of truthfulness in denying their use. Was there malice? Gentlemen, embittered words do not always spring from a heart boiling with malice or revenge—they are often the offspring of indignation or erroneously conceived opinions. In the latter case cooler moments, or the correction of the error wipes out every trace of their existence; in the former the revengeful seed continues to send forth its natural fruit, and unceasingly betray its existence. How is it in this case? You know enough to be aware that Phelps believed that he was wrongfully imprisoned—that the executive concurred in that opinion and pardoned him, but for four years his tears had moistened the bread of a captive; for four years he had toiled within the gloomy walls of a prison, was it not natural—was it not human—that as he thought of his home his wife, his child, the sunlight that was denied him, and the pleasures beyond his reach, that his heart should frame and his lips utter bitter curses on the man whom he deemed had wrecked his every hope in life? But was Abel F. Fitch tnat man? No! for at page 143 Phelps says:

"Mr. Fitch was a witness for me when I was convicted and sent to State Prison, he was called to impeach a witness against me, and did it the most liberal manner; he took a decided interest in my behalf; I never had an ill feeling against Fitch, and never had any difficulty with him."

If this was not true, why was not Phelps contradicted? If Fitch was not a favorable witness why has it not been shown? If difficulty ever arose, why is it unproven? If Phelps entertained malice the only cause assigned is for aiding in his conviction—that is its nature, its reason, the one sole cause embodied in his threat. It often happens that the captive hears false accusations against his best friends. If they are breathed in his ear after four years of unmerited punishment, when the heart is crushed and the feelings morbid, they are readily received and believed in, and while they last excite bitter emotions. But if the accusation is false, 'tis soon corrected, and bitter feelings are forgotten. The whole course of Phelps' conduct after he left the Prison shows that such must have been the case between him and Fitch. He went to Prison in '44, then believing Fitch his friend, knowing that he was active to procure his acquittal. Every friend that visited him had some suspicion to breathe against one person or another; and during these four years he had probably accused a hundred persons as the instruments of his incarceration. It finally became Fitch's turn to be suspected—he *was* suspected. And while suspicion existed the threat was breathed "he is the means of my being here." "I am here through his influence, and will give him the same feed." Perhaps the words of the next friend that visited him, or the next moments reflection on Fitch's favorable services at the trial, erased the suspicion, and blotted out the hasty anger it engendered. This is no improbable hypothesis, and it alone is reconcilable with the facts and af-

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ter conduct of Phelps. He suspected Fitch wrongfully, that is conceded, for was it otherwise, there could be no excuse for counsel failing to prove it. Phelps' conduct shows that he corrected this erroneous suspicion. For two years after coming from prison he lived within 8 or 10 miles of Fitch. Does he attempt to do him any injury? No. Does he during these two years breathe a threat, or lisp a syllable against Fitch? Not one. It is only after a lapse of two years that we find him near Fitch, and then at his own house, by his *own* request.— Can it be believed that malice festered in his heart during these two years, and yet while hundreds of his neighbors, and daily associates, have been on the stand, there is not one who ever saw or detected the slightest indication of it. 'Tis an absurdity if not an impossibility.— Again, if the the threat sprung from hastily assumed and as hastily abandoned suspicion, Phelps might easily have forgotten it, but if from deep enduring malice that could burn and glow and live through two years, without food or outward indication, he could not have forgotten and would know that two truthful witnesses would contradict him. In such a case how easily this man (described by counsel as possessing the cunning of a devil) could have broken the force of the contradiction by "I once suspected him, and may have said something of the kind," or one of a hundred other such sentences.

7. At page 122 Phelps gives an account of an interview with Fitch at his barn in the month of December, as follows.

(Here counsel read the testimony.)

On cross-examination he states that on this occasion he went to the Centre with some of the Lacocks, and after it returned to Lacock's.

It is claimed that his account of this interview is contradicted by Morgan S. Lacock, H. T. Lacock and C. Blackburn, whose testimony I read.

(Here counsel read portions of the testimony.)

You perceive that about the fact of an interview there is no difference. They all agree that on that day Phelps went to the Centre, and that after he arrived at Filley's he went alone to Fitch's for the purpose, as he said, of seeing him about the oxen. So far the witnesses all corroborate each other, but Pnelps said he was *two hours* at Fitch's and it is claimed the other testimony limits the time he was at Fitch's to half an hour. Now all that Phelps has narrated might pass in less than half an hour, and it is scarce a contradiction to find a witness mistaken when he gives an opinion as to the duration of an interview. Even the witnesses who are claimed to contradict *him*, in this respect contradict each other, for they each assign a different hour as the time when they returned. Your own experience will tell you how seldom, even, persons present at the same interview will agree in a statement of its length. The counsel is mistaken in saying that Phelps said the interview was in the afternoon. I have looked carefully over his testimony and find no such such statement. If Phelps had noted his interview with a time piece, and the others had done the same, and then differed materially there might, be an excuse to claim a contradiction, but none of the parties appear to have had watches. There is no reason assigned why any should note the lapse of lime; they *all* give their *impressions* six months after the occurrence, upon a matter

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which of all others would be likely to involve an honest difference of opinion, and which is utterly immaterial.

8. Of a similar character is the pretended conversation between Phelps and his wife at the house of W. B. Laycock. Laycock says that after they went to bed Phelps and his wife whispered over an hour and Phelps said aloud "if Wescott does as he agreed I will come a good drive on Fitch;" he tells you that altho' they whispered over an hour, this was all that was spoken aloud; he tells you they all slept in the same room, their beds almost touching each other and that Phelps was aware he was there. The absurdity of this story is an answer to it, for it is utterly absurd, to suppose that a man entertaining the designs imputed to Phelps would thus reveal them. But to set the matter at rest we placed Mrs. Phelps on the stand, and she, as you heard, denied that there was any such conversation. Laycock also says that on his return from the Centre Phelps said he "would have Fitch in the limbo for not selling him the cattle," and this is no less an absurdity than the other. The counsel stated that even the wife of the man, Phelps, would not swear certainly that the conversation did not occur, but only she *thought* not. Gentlemen all you have to do is to turn to your books, read her whole testimony and detect this misrepresentation.

9. The learned counsel says Phelps contradicts himself by saying that when he saw the match in January at the Centre he told Fitch and Filley he had seen a similar one at Gay's; when in another portion of his testimony he says he did not see the one at Gay's till February. I refer you to the entire passage in Phelps testimony, page 148 and you see he is guilty of no such blunder.

"When the machine was shown me at the Centre, I told them I had seen one like it at Gay's; saw it at Gay's house on the night of the 24th of February, in a small bedroom, on the left hand, up the first flight of stairs."

The entire sentence shows that he referred to a period subsequent to the 24th February, probably to the time when he got the Niles match.

And these were the fatal engines which were to destroy Phelps!

I have now gentlemen, gone thro' with all the alleged contradictions of Phelps' so far as my minutes of the counsel's argument can suggest them, with the exception of those pertaining to the eleventh of April, and which will be more conveniently treated of, as I proceed with a review of his testimony. By grouping all of these pretended contradictions together. I have placed them before your minds in the strongest light, and I ask you what do they all amount to? There is not one among them of much materiality, even if the contradiction was established, and such as they are the other evidence explains them away. You remember the general outline of Phelps testimony; you remember its length; the variety of its details; the number of its incidents; the almost numberless places and interviews it comprized; you will perceive at once that if false he exposed himself to material and substantial, and essential contradictions at every step, yet no such contradictions have been shown. When a witness deposes to such a quantity and variety of matter involving so many occurrences and in-

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dividuals it would be strange indeed if some were not found whose recollections would differ from his as to the hour, the date, or some such immaterial matters,and these are the only points on which a contradiction is attempted. To find the substantial portion of a witness's testimony remains uncontradicted is always an evidence of truth which cannot be overborne by a difference of opinion between witnesses in matters immaterial to the issue.

Having thus, gentlemen, I trust to your entire satisfaction, shown that Phelps stands before you unimpeached by general character or contradictions, I will, for a moment, call your attention to those matters wherein he stands uncontradicted, notwithstanding that, either in the opening for the defence, or by questions put to him in the usual form for impeachment, the defence intimated their ability to contradict him.

These matters will also serve to illustrate the difference between material and immaterial matters.

You were promised, in the opening, that proof would be adduced that Phelps and Lake while in prison, entered into an agreement that when they got out, they would make fortunes by burning buildings and swearing the crimes on to innocent parties. No such proof has been offered. At page 145, Phelps was asked if they had not entered into that agreement; he denied it, and no attempt has been made to contradict it. When recalled for cross-examination he was asked if he had not, in September, tried to hire John Hawley to aid in burning the Detroit depot, and swearing it on to those who had cattle killed, promising him $50 and a portion of the reward—he denied it. Hawley was sworn, and testified he had so tried to hire him; but in a few days after, stung by the restless gnawings of remorse, he begged to be recalled upon the stand. He was again placed before you, pale and trembling, and confessed that his evidence was deliberate perjury, to which he was suborned by Billings, the friend and partizan of these defendants. The same Mr. Billings who, by turning to page 98, you will find was to have impeached another of our witnesses, if the fate of his pupil Hawley had not warned him that the moment he appeared in this county, he would be placed in the custody of the law until he had expiated his crimes.

At page 159, Phelps was asked if he had not tried to hire George Lynx and Andrew Barney, for $200, to swear that Lemn had fired the depot. He denied it; yet no Lynx or Barney appeared to contradict him.

At the same page; he was asked if he had not tried to hire Bildad Bennett to swear against Fitch, Burnett, et. al. He denied it; yet although all through the trial actively engaged for the defence, no Bildad Bennett appeared to contradict him.

At page 150, Phelps was asked if he had tried to hire Smith, by letter and personal application, to go out and get acqnainted with the defendants in order to swear against them, or to swear Lemn burned the depot. He denied it; yet there was no attempt to contradict him.

On July 15th, when recalled for cross-examination, he was asked if he had not tried to hire Cooper to rob the depot safe. He denied it, but charged that Cooper tried to seduce him into the commission of

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crime, that he might be arrested, and that even one or more of the counsel for defendants were cognizant of the plot. Mr. Cooper was not produced to contradict him by the defence, but at much cost and trouble the prosecution brought Cooper from his hiding place, placed him on the stand, and the defence availed itself of technical grounds to exclude his evidence.

On July 14th, he was asked if he had not said to one Dyer, that he was bound to break up Fitch and his band, even by false swearing, and to have revenge. He denied it. Dyer was placed upon the stand, and it was claimed, contradicted him. But when Hawley was arrested Dyer disappeared; he did not even wait for cross-examination, although his evidence was important enough to justify the trouble and expense of bringing him from Indiana; it was deemed more prudent to assent that it should be stricken out, than that he should be produced for cross-examination, and arrested for wilful perjury.

On the same day he was asked if he had not solicited Miss Merwin to go to Fitch's and leave counterfeit money on his premises. He denied it. Explained that his only purpose in going to Merwin's was to ascertain for the sheriff if she was not living in a state of incest with her father; and yet, although as appears by the confession of Hawley, Miss Merwin was in town, brought here from Indiana to impeach him; she is never produced.

I might with little trouble add to the list of important contraditions that were shadowed forth and promised, but I have given you enough to exhibit the marked contrast that exists between those attempted and those left unattempted. You will perceive that if the witnesses named in the list of questions I have read were produced, and contradicted Phelps, their testimony, if believed, would have gone far to establish the whole theory of the defence. It would have shown Phelps and Lake conspired to burn buildings, and swear their arsons on to others. It would have shown Phelps, in September, plotting the burning of the depot, with the design of charging it upon these defendants. It would have shown him on divers occasions, suborning witnesses to swear falsely against them. It would have shown him expressing bitter malice and hatred against these defendants, and Fitch in particular. In a word, gentlemen, it would have come up in letter and in spirit to the evidence promised by counsel in their opening. But it is all abandoned, and in its stead you are offered a few alleged contradictions upon matters without the case, totally immaterial in themselves—of a character where honest witnesses are frequently mistaken; and even these arising from a mistaken view of the testimony, or answered fully by their own inherent improbability.

And now, gentlemen, that we find Phelps unimpeached, and uncontradicted, without falsehood on his tongue, or malice in his heart, how is it with his testimony? If we find that it is sustained page by page, and line by line, by other witnesses, with whom he could by no possibility have collusion; if we find it natural in itself, devoid of all improbabilities, and dotted over with the inherent evidences of truth, I will feel every assurance in asking you to receive it as true. It may prove wearisome to an audience, that I should go over, even hurriedly, the testimony of Phelps; but I am convinced it will not prove so to

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you; anxious as I know you are to do your duty, fairly and faithfully, and render a verdict that your consciences will approve, you will cheerfully endure every dull detail, that may the better enable you to come to a just conclusion. As we pass over the important portions of his testimony, you will perceive that it is fully corroborated, and that if false, a hundred doors are opened for contradictions upon material points. You will, I have no doubt, come to the same conclusion I have arrived at, that from the very nature of his testimony, it is quite impossible that he should be at the same time untrue and uncontradicted.

He testifies that in December he had an interview with Fitch at the Centre, in which Fitch proposed to him to burn one or the other of four depots; that he wanted it done by some shrewd man, &c. Wescott proves that the same proposition had been made to him, by Fitch; and Loud proves that Corwin, who with Fitch, I have shown you was clearly identified in the combination, intimated that there would soon be a fire at the Jackson depot. McMichael and Morgan Wescott also prove the intention to burn the Jackson depot; and Dobbs proves the proposition on the part of several of the defendants to burn the boats of the Company. We have the same designs and intentions on the part of the conspirators, of which Fitch was undoubtedly the leader. And why should we doubt that the proposition was made to Phelps as he states. The fact of this interview having taken place, is proven by their own witnesses, though they differ as to the time of its duration.

Again, he says, Fitch urged upon him that he was already ruined in the eyes of community, and that if he went into their plans they would place him in easier circumstances. Are not these the very reasons that would present themselves to such a man as Fitch, to tempt one who had once borne the badge of ruin and disgrace? You are told it was not likely that a country gentleman like Fitch, "would thus commit himself to a pardoned convict; but you will remember there are a host of unassailed witnesses who prove that the heart of this country gentleman was filled with malevolence against this road; nor will you forget the actual intimacy between Fitch and Phelps so fully proven.—It is certain that if Fitch did not actually participate in, he knew of and encouraged the perpetration of injuries against it, far more fearful in their consequences, than the burning of the Depot. The country gentlemen whose rural sport it was to obstruct trains, and according to his own confession, to arm savage boys with pistols to "frighten engineers and passengers," needed other hands than his own to work out his designs; and I ask you was not Phelps just the man he would select. He was shrewd, sober and intelligent; he might readily be supposed to have a morbid hatred of the world, but above all he *had* been a convict; the brand of crime had once been stamped upon him, and if he dared betray, he could be crushed. In the words which a dozen witnesses have given you as the language of these conspirators he could "be sworn down." Again you will note that in this interview, no confession was made of the past arson; it was only afterwards, when Phelps seemed caught by the tempting bait, and firmly hooked, that he was admitted to full confidence.

Again he says, Fitch said the road was a curse to the community,

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and he and others had determined to see the people's wrongs righted; the Company had already been injured, and they desired to go farther to bring them to terms. If not from Fitch himself, where did Phelps learn this language; this straining to throw the garb of heroism and public spirit, over fiendish crimes; thus ascribing lofty motives to the burning of Depots, and the murdering of women *and children.* That they were Fitch's sentiments, there is no doubt, for so precisely, he expresses himself Attorney-General Lothrop, to Wm. Gibson, to Wm. Galespie and others; witnesses from whom Phelps could not have learned them for he had no communion with them. The most important interview to which he testifies is on Christmas day at Filleys; he says Filley said he thought Fitch would give the oxen and the balance of $200 in cash if I would burn the Depot at Niles. You will note gentlemen, the consistency of this testimony, with that which has fallen froma hundred others. Brown told you they used to call Fitch Captain; when the proposal was made to Dobbs, Fitch was referred to as one who would pay; so McMichael says Fitch's name was used as an inducement to him to burn Jackson Depot: Wescott p. 43, says, Barrett said Fitch could always clear them; again Welling said Burnett told Fitch to stop the obstructions; but Fitch said he had advised the boys *not to get caught*—all indicating that Fitch was the man to pay the leader. And here again, with the harmony of truth itself, "Filley thought Fitch would give me the oxen and the balance in money."—And so, gentlemen, you will find it through all this testimony of Phelps; lengthy and minute as it is, there is not a word that clashes with the evidence of the 100 unassailed witnesses who have been sworn. He says at this interview, Filley told him they had sent a match to a man in Detroit, to put in the cupola, described the match, &c.

Here gentlemen, is the first confession of any connection with the fire in Detroit; by reading the full testimony, you will perceive that on on this day, E. Price also confessed to an aiding in the arson; and you will ask yourselves how strange it is, that while it is claimed that malice to Fitch was Phelp's great motive, he passes him by and identifies with the burning, two men against whom there is no pretence that he ever entertained a particle of enmity. You will also notice that while Corwin and others join in the conversation and urge him to undertake the Niles matter and other crimes against the road, he does not place words in the mouth of any one of them, save these two, that could implicate them with the arson. You will also perceive that at this early date he located the fire *in the cupola.* The importance of this is, that *although* when the persons who first saw the fire were hunted up and brought upon the stand, it was made manifest the fire was there; yet there were many who until then, would swear it was not. It was only the strict tests of oath and cross-examination, that established where the fire first was. You will bear in mind that Phelps is not shown to have been acquainted with the witnesses who have here proved that the fire did originate in the cupola; yet Phelps was told by defendants, that the match was there placed, and he reported the fact to the Company. There is also strong corroboration to the truth of Filley's confession of his participation in the arson—Mr. Sutton and Wm. Morrison, p. 108 and 9, say—Filley speaking of

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the burning of the Depot, said "I suppose they will lay it to me, God damn them; I will show the Company I *can burn out here as well as down there.*" So far as Ammi Filley is concerned, we might dispense with the testimony of Phelps altogether. Coming from a man engaged for years with outrages against the Company, and who had threatened to burn, and who as half a dozen men prove, gave the Company credit on the burning; this language to Suttonand Morrisonis a confession in itself. How natural it is that Filley who spoke so recklessly in a grocery in Jackson should be the first to entrust the secret to Phelps.

The next interview that Phelps testifies to, is, that at Palmers; where he states there was some conversation relative to Lacock's turning spy, and his having received pistols from Fitch to shoot at the cars. It is claimed that C. Blackburn swore this conversation never occurred.—Phelps named Blackburn as one of the persons present, and yet he does not from the beginning to the end, swear to a single word against him. Now if Phelps was swearing false, how easily he could have given some admissions to Blackburn that would at least seal his mouth as a witness. Yet although at one time Blackburn was a defendant, Phelps passes him over; does not attribute a single word to him, but leaves him to be discharged by the Court, and become a witness.—Again you will note how accurately he details all about the pistols given by Fitch, and how perfectly it corresponds with the truths that were then known only to a few, but which have since been revealed before you. You will bear in mind that this Blackburn was an idle, heedless boy; and that it may readily have been that he did not hear all that was said.

The next important testimony of Phelps is his interview at Leoni with Williams, Freeland, Corwin, and Price. Among other things,he says, plans were suggestod to get rid of Wells and Laycock who had gone into the employ of the Co., and Williams said, "you knew I was the means of the cars being thrown off altho' I was in bed." This you will note is early in January; but see how it corresponds with the testimony of other witnesses, some of them discovered since. Wolliver says it was done by Filley and the Prices; yet that Williams had a part in it is shown by Wescott who saw money paid to him on account of it. Williams afterwards explains to Lake that he remained in bed to be a witness and prove an alibi for those who did it; and Henry says when that obstruction was spoken of, Williams said "they couldn't lay it to him for he was in bed."

He further testifies that in this interview Freeland and Williams admitted the payment of money towards the burning in Detroit. Refer to the testimony and you can have little doubt that this is true.—Corwin told Loud "mark my words there will soon be a fire here," at the Jackson depot. He tried to induce McMichael to burn it, and he was one of those who tried to hire Dobbs to burn a steamboat; there is little doubt that the man who endeavored to have one depot burned would be party to the firing of another; and Brown and Wells and other witnesses have shown you that Freeland was a prominent man in the combination, and the first to wnom the thought occurred of blowing up the train with powder.

The next important testimony is the interview with Fitch on the 10th

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of January. This is the interview claimed to be contradicted by W. B. Laycock, and referred to before among the alleged contradictions; and you will note that altho' it is said that animosity to Fitch and the desire to get him to prison was the chief object of Phelps, it is only at this late period after four others are implicated that any thing is revealed by Fitch to identify him with the arson. This is quite inconsistent with the theory of the defence: if malice against Fitch was his motive, and he spoke false, Fitch would be the first he would implicate; and it is consistent with that which experience would lead us to expect, that the reckless tools would more freely commit themselves than the acute and cautious leader.

But to return to the interview between Phelps and Fitch. Phelps says he said they had prepared the match and sent it to a man in Detroit who placed it in the cupola; that they paid him $150.

This, gentlemen, was in January, yet how exactly it agrees with the admissions of Gay made in April, to Clark and Van Arman. Gay also says he got it from his friends at the Centre; he placed it in the cupola, and they paid him $150.

To return to page 158 Fitch said it was "so constructed as to burn in a given time."

Is this not convincing evidence of truthfulness. We have shown you that match made according to the dascription given by Filley can be made "to burn a given time;" but were enabled to show it to you only by means of a skilful chemist. We have shown you in the most conclusive manner (I will not now repeat the argument on that point,) that Phelps was utterly ignorant of the material and construction of these matches; how then could he, so far back as January have put these words in the mouth of Fitch.

In this same interview Phelps says Fitch spoke of the injury already done to the company; of people having been warned not to travel; of his influence and his ability to procure witnesses; that he could impeach any man.

It is scarce necessary that I should ask you is not all this evidence true? The same in substance is testified to by a dozen witnesses who are not questioned; far more is testified to by Mr. Knickerbocker and Mr. Chadwick. The truth of much of it you have witnessed, yourselves so far back as January, Phelps reveals that that the chief bond and reliance among these men was their ability in case of of a prosecution to obtain false testimony. The arrest and prosecution came, and as promised, the perjury came with it. Hawley was subpoened. Although Dyer has not confessed, I am safe in saying he was not a true witness, else why should he, an important witness, fly the state without examination. I am also safe in saying that when the questions I have read to you were put to Phelps the witnesses were on hand to contradict him. They knew he would deny, and were prepared to contradict. Let me instance the case of Miss Merwin whom by Hawley's statement we know came here, and was in this city before the question relative to her was put to Phelps; before they knew he would deny it. She was sent for and brought to contradict him. What inference can you draw but this—that knowing he never said it, they knew he would deny it. Otherwise why not wait for his denial be-

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fore bringing her from Indiana; but it is useless to argue that the defendants were prepared with false witnesses. We know that parson Billings brought his quota from Indiana, and before I conclude I will show you just as conclusively that Leoni furnished its quota, and fully justified the boast of Williams that they "had there those who could prove a horse a smith's shop, and every hair a lighted candle."

I will ask you here, gentlemen, to pause and review the portion of Phelps testimony which we have gone over. You percieve that up to this point he states many things that have since been otherwise demonstrated, and which in the month of January could have been known only to the initiated. As for instance. That the depot was fired in the cupola; that such a match as Filley described would and could be graduated to burn a given time; that Gay was the person who actually fired the depot; that if arrested and prosecuted, these defendants would defend themselves by false witnesses. Until the testimony in this case shed its light upon them, all these facts were involved in darkeess and doubt, how then could Phelps in January state them as facts. How account for his positive statements of these things in January save by the hypothesis that he speaks truly; that he had had his information from the men who made the match, and procured the commission of the arson?

You will remember that until after this period, Phelps was not in the employ of the Company, but in the employ of Mr. Bates—that up to this time he states he gave information to Mr. Bates of what he learned. Mr. Bates was in the court room frequently during this trial. If Phelps spoke falsely in saying he knew these things in January, the defendants had it in their power to contradict him, and failing to do so it is equally a rule of law and of common sense that you shall presume that if placed on the stand Mr. Bates would so far corroborate him.

It is proven that in January Phelps knew and stated with certainty many of the truths of this case of which all others were ignorant: a fact which can only be accounted for by the hypothesis that he is an honest witness and has spoken the truth. You will also remember that while the defence claim that the charge of arson was the pure result of malice against Fitch, Phelps testifies (and Mr. Bates could contradict him if it were untrue) that a few weeks after the depot was burned, he told Mr. Bates of Gay's confession that he was the felon; and only seeks further revelations by the direction of Mr. Bates. Yet although he is the first man against whom he gives information, counsel gravely tell you it was all a plot between Plelps and Gay.

But to return to the narrative of Phelps. He tells you that in February, Dr. Farnham told him that he was preparing a machine to blow up the track, and that in March he showed it to him, and said it was then complete. In going over the list of acts done, I have already shown you that this evidence is abundantly corroborated. By Brown and Wells, that the plan of using powder to blow up the track was contemplated by Freeland, Fitch, Filley and others, and by Wyman and Burdick that the Doctor was prepared to blow them np.

Phelps next details his interviews and conversations with Fitch in Detroit, and which, although attacked by the defence, are, as you have

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seen, fully established and corroborated by Mr. Doane, Mr. Sheely and Wescott, and his long conversation with Fitch on his way home in the cars, which is also corroborated by Mr. White.

Before passing on I will allude to the substance of these conversations as detailed by Phelps.

1. Fitch came to make some arrangement to prevent Wells and Laycock making disclosures to the company. We afterwards find that Laycock *leaves* their employment. 2. Fitch says he gave Gay the matches to burn the depot. We afterwards find Gay telling Clark and VanArman that this is so, showing them a match and offering to take them to the Centre and introduce them to defendants, 3. He tells how he detected that Wescott was a spy. There could be no collusion here between Phelps and Wescott, as both deny acquaintance at the time, and if it existed the defence could prove it. And Phelps made regular and full reports to Mr. Clark, who had them in Court, within the control of the defence; and yet his account is substantially the same as Wescott's, the only variance being, that while Wescott and several other witnesses show the information of his being a spy, to have been given by the prison guard, Fitch boasts to Phelps that it was sent by the Prison agent himself, Fitch you will perceive where he gave the narration, was boasting of his influence, and it was very natural that he should substitute the *agent* for the *guard.* It is a variance, but a variance that rather confirms than weakens the truth of the evidence.

The next important evidence is the interview of Phelps with several of the defendants, at Bascom's tavern on the first day of the Court. He says they had a long private conversation in the sitting-room, and this fact is corroborated by George Holden, a constable, who went in to serve a subpœna. Apart from the corroboration, the mind naturally inquires if there were no criminal secrets between these men and Phelps, why all these secret interviews corroborated by so many witnesses? Why should Fitch subsequently say he knew Phelps but slightly? It was at this time that Lake was introduced as the person to assist at the Niles' burning, and when Williams stated the rules to be that if he betrayed he should be shot. Although Williams proposed swearing Lake to secrecy, Lake only pledged himself. This is seized upon by the counsel as evidence of the falsity of the whole scene; he asks why was not the oath insisted on if it was the rule? Who deputed Williams to represent the entire combination, receive the neophyte and administer the oath?

To my mind it is evidence of directly the reverse, for if Phelps was fabricating, he would have colored the scene; there would be more secresy, more form and probably an oath; but as he tells it, it is entirely consistent with the testimony of others. These men had no lodge, no officers, no forms of initiation, but whenever a new conspirator joined them, he was was warned that punishment and vengeance would follow a betrayal. But again, Phelps says that in this interview Williams said they were going to make a proposition through their attorney to the company for a settlement, We offered to prove that such a proposition was made, but it was objected to—the offer over-ruled. We named and placed upon the stand the witness to whom it was

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made, and the defendants had it amply in their power to show the falsity of the witness. They could show if no such proposition was made, or by calling for Phelps' reports to Clark, could show if he had not reported their intention before their offer was made. How is this to be answered, save by the hypothesis that Phelps speaks the truth? Did he prophecy such a proposal, and then influence the defendants—innocent men, who never violated a law—to work its fulfilment by implicating themselves?

Again, he testifies to his interview with Gunn at Niles, and if you turn to the testimony of Mr. Fitzmorris, you will find it fully corroborated, not merely as to the interview, but as to a portion of the conversation about getting Sherman out of the way, Again, on page 137 he says, that as early as March the boys informed him that they were all working for particular candidates for the approaching election, and strange enough those very candidates got almost the unanimous vote of Leoni, although of opposite politics to the usual vote of the town. We find Phelps prophesying against all seeming probabilities, but his prophecies are always fulfilled.

I have thus, gentlemen, taken the most important portions of his testimony and shown you that it is wondrously corroborated. I might go over it all in the same manner. There is scarcely a line that is not sustained by other witnesses, but I dare not trespass longer on your time, and pass on to his testimony regarding the 11th of April.

Without delaying you by reading his testimony in full you will remember that in substance he and Lake testify that on the morning of the 11th of April, they left Metcalf's in a buggy; that they had nothing in the buggy but some straw; that they went to the house of G. Cady to see about a horse Phelps wished to purchase; and from thence along the road that runs north of Beeman's field, and about a mile south of Leoni, (not going through Leoni,) to the Centre. That they did not part, or get out of the buggy from leaving Cady's till they reached the Centre; they then saw Filley; Lake being sick, remained there; and Phelps at once went to Leoni; thence to Grass Lake; back to Leoni, and from thence in the evening, accompanied by Myers and Corwin to the Centre, where the match for the burning of the Niles depot was delivered.

The principal portion of the defendants testimony has been intended to contradict Phelp's in his narration of his journey and the occurrences of this day. The effort of all the testimony has been to raise a presumption that Phelps and Lake carried the match to the Centre on this 11th of April, making as the counsel claims, a third distinct defence. From all the indications we had, we could easily anticipate, that Leoni would "do its duty" towards these defendants, and her champions selected the space between Cady's and the Centre for a battle-ground. It now becomes my duty to carefully examine the evidence adduced by the defendants upon this head, and show that while a portion of it is the result of evident mistake; the balance is wilful and deliberate falsehood; just of the character that could prove "every hair in a horse a lighted candle."

I. It is claimed that they carried a box tied up in a red kerchief in the buggy; that Cady, Peeler and Kellogg saw it.

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I now refer to the testimony of Mr. Cady. (Here counsel read portions of Cady's testimony.)

You see gentlemen that Mr. Cady, who is evidently an honest upright man, does not color his testimony. He tells you he cannot be certain he saw anything in the buggy; but is of the impression that there was a "reddish *bundle*" back of the seat. You will remember that when recalled Lake testified that he had with him that day, an overcoat with red lining which he produced, and the day being warm it was thrown off. But counsel says this was an afterthought; but by turning to the cross-examination of Mr. Cady you will perceive one of the first questions asked him was if it was not an overcoat he saw, and he replied "It *might* be an overcoat." There is so far no contradiction; it was not strange that Phelps and Lake should at first omit to state they had an overcoat, any more than that they should omit to state they had undercoats, or boots, or any other article of dress. You have heard that Mr. Cady stood several minutes beside them in the road. If they had a square box in a red handkerchief, it would give a very different idea from a "*bundle like*," and one that would never permit him to say "it might be an overcoat." I now turn to the testimony of Peeler and Kellogg.

(Here counsel read the testimony.)

You perceive they had no such opportunity to see what was in the buggy as Mr. Cady; they merely passed Phelps and Lake on the highway without stopping, while Cady drew up beside them in the road and conversed for several minutes. Yet Peeler and Kellogg swear, one that it was "the shape of a box;" the other, "something in a square form." They tell you it excited their attention and they conversed about it. Suppose it to have been a box tied in a red hankerchief; is it at all probable that it would excite attention? Is it so unusual for two travelers in a buggy to have a small box in the back part of it? But listen to Peeler, "Kellogg said by G—d, he believed it was full of counterfeit money." Mr. Kellogg don't seem to quite relish the idea of fathering such profanity and gives a more subdued and chaste version he says, "I said perhaps the stranger is a *musician* and it belongs to him, perhaps it is a box of bogus or the tools for making it." This evidence you will remember was given before the arrest of Hawley. Before the prosecution had been guilty of the shameful oppression of arresting a miserable perjurer, and thus sending a bevy of witnesses back *unsworn* to the tamaracks of Indiana. It was the first gentle opening to all that *was to have been proved.* You will remember the counsel who opened promised to prove Phelps represented to Corwin the box contained bogus; it was therefore well enough to have other witnesses who not only saw the box but recognized in it the "bogus look," that helped to deceive Corwin. Where plain direct perjury has been shown on the part of the defence, as has been done in this case, you are bound to look with caution if not suspicion on all their testimony. Perjury was one of the weapons of defence. Is not this a likely place to strike a blow with it? The witnesses only swear they deemed it a box, and who could indict them for mistaking a bundle for a box? They would be safe in stretching their testimony a little. But are they men who would do it? Listen to Peeler's bio-

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graphy of himself. He entered the army, was twice Court Martialled, and finally punished and dismissed from the service. He contracted an alliance by soldiers marriage with a woman at Sackets Harbor; they had a child; he left them and never inquired after them since, and don't know if they are living or dead. He married again at the Sault; can't tell his wifes name or if she had another husband living when he married her, but heard something of the kind; can't tell who married him or who were present; he came to Detroit, lived with Kellogg and finally the pair found a suitable home and settled down like brothers in the same house and near the rural district of Leoni. You can review their testimony gentlemen and determine whether they have spoken falsely, or only stretched a little for friendship's sake or whether they are honestly mistaken, taking into account the improbability that Phelps and Lake would thus carry a match exposed to the view of every passer by.

Then ext alleged contradiction is while Phelps says he did not go to the village of Leoni till after he left Lake at the Centre about noon, several witnesses swore they saw him in Leoni on that day from 10 to 12 o'clock; that he came in from the South, and his horse ran away.— These witnesses are Alden Luce, Mrs. Tull, Jno. Cuykendall, and I. D. Tull. All of these witnesses save Mrs. Tull, identify the occasion as the day of a certain lawsuit before Justice Bildad Bennett, a gentleman whose name has already figured in this cause as one of the witnesses who *did'nt* swear; and who will again appear as active in procuring the testimony of the Bemans, which I will show you to a moral certainty is false. You will remember that Phelps on being recalled testified that on an occasion preceding the 11th, he did come into Leoni from the South, and his horse did run as described. The question then becomes one of date, and while three of the four witnesses swear that they were guided by the date of the suit, as it was in the possession of a warm friend, it would have been frank and candid to have produced the docket, and shown that there was no mistake in the date; that there were no erasures, no attempt to mislead by a skilful change of the date of the suit' It can scarce be expected that a prosecution can demonstrate that every particle of testimony introduced by a defence, springs from mistake or want of truth, but in this instance it can be done.

I refer you to the testimony of Mr. Luce who swears he saw Phelps as described on the 11th. "He knows it was the eleventh because it was the day of the suit. And he has since examined the record."— So far it is consistent enough, but follow his cross examination and he tells you that about sunrise on the Thursday following the eleventh, he met Phelps on the railroad track near Leoni. "He *knows* this was the Thursday after the 11th;" and gives you divers reasons why he cannot be mistaken. Turn to the testimony of Mr. Howe and Mr. Spaulding given the 1st of Sept., and you find beyond all dispute that Phelps was in Detroit Wednesday night and Thursday morning, and that he went West on a train that followed the regular one on Thursday morning. So he could not by any possibility be where Luce says he met him before noon on that day. Luce then is mistaken beyond question, and it follows that the other two who swear by the docket are also mis-

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taken. Other circumstances show that Mrs. Tull, who does not swear by the docket, is also mistaken in the date. Her testimony in effect is that she saw Phelps come into Leoni a little past ten; after this she herself went to the Centre, and got there about 12 o'clock, when she arrived there she saw "the same horse and buggy Phelps had tied to the post, and in about three quarters of an hour after *the horse and buggy driven off South.*" There is something strange in this guarded phraseology; if she saw the horse and buggy driven off she saw who drove, and why not say it was Phelps or it was not Phelps. Although she may have been at the Centre on that day, and met Phelps, Corwin and Myers, on her return in the evening, as she states, it is very clear that it was not this day she saw Phelps in Leoni, and "the same horse and buggy" at the Centre for three quarters of an hour. Turn to the testimony of Mr. Kane, and Mr. Allen, both called by the defendants, young merchants of intelligence, and they tell you, they arrived at Filley's on the 11th, about noon or a very little past noon, and remained there till about 1 P. M., when they went to hunt. And although this is just the period when Mrs. Tull tells you the horse and buggy were there, they saw no such thing. And although they were round there making their preparations during the same period, Mrs. Tull never saw them; their vision was closed to the horse and buggy, while Mrs. Tull could see nothing else. It is manifest that she is mistaken, and the most charitable conclusion you can draw is that in her mind the occurrences of seveaal different days are by some strange confusion gathered into one—thus alone can you reconcile her testimony with that of others and preserve her character for truth. The learned counsel has referred to the testimony of Hudson, and says he proved that Phelps said at the Centre that night that his horse had run THAT day and it was the only time he ever did run. The counsel is mistaken in this; all Hudson says is "Phelps also said that his horse had run away, but that before he had been very steady." And this might as well apply to any other day as the 11th April.

We now come to the most important contradiction of all—an event in this case which fully illustrates the difficulty of framing a lie so simple that it does not bear the impress of falsity.

Lake and Phelps testify that they did not part till they got to the Centre—that Lake did not get out opposite the Beeman field, take a bundle out of the buggy, and go across lots towards the Centre. On the other hand, James E. Secord, David Beeman and Charles E. H. Beeman swear that at that point, on that day, and between 10 and 11 o'clock, they saw two persons answering to the description of Phelps and Lake, come along in a buggy, that the buggy stopped and one got out, took from it a bundle covered with a red handkerchief, and passed over the fence and through the fields towards the Centre, while the other person remained in the buggy and drove on to Leoni; and Taylor swears that on the same day, he met a man on the road between there and the Centre with a bundle covered with a red handkerchief under his arm.

The first thing that will strike you in reference to this testimony, is that it is confined to a single point. If the witnesses are false there would seem scarcely any possibility of contradicting them, there are

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no surrounding circumstances, no details, it does not, like the testimony of Phelps, embrace several persons and long details; it is confined merely to seeing a man get out of a buggy at a particular time and place. If then, in a tale so simple and so concise. we find that the witnesses get confused, contradict themselves and each other, and that the story bears every impress of improbability, painful though it may be, we cannot avoid the conviction that it is false. With these remarks I call your attention first to the testimony of Secord. By referring to his testimony you will perceive that he contradicts himself as follows: He says he told Cozzens of it, (seeing the man get out of the buggy) before Phelps was sworn, and again he says he can't say he ever spoke of it until *after* Phelps was sworn. Again, that for three or four weeks he has calculated to swear to this fact, and again, that until the day before he was on the stand, he did not keow it would be important. Again, he says he first thought his testimony would be important as he saw Phelps go from Leoni that night with Myers, and pay a quarter for liquor, and then he says he don't know why he thought *that* would be important. Here I will ask you to notice, gentlemen, that no mention was made about Phelps paying for liquor till on the 12th of July, by Luce, some nine days before Secord testified, and yet for four weeks he thought it would be important! Again, on his direct examination, he says he saw the man thus get out of the buggy from the 7th to the 11th, but on cross-examination fixes it on the 11th, and then don't remember if he said from the 7th to the 11th, and yet he fixes the date by the law suit before Bildad Bennett. These contradictions are all scattered through his cross-examination; they are not all in one place, but they are all *there.*

I next refer you to the testimony of David Beeman, who you will find contradicts hlmself as follows. He tells you he was at work with his son, and sent the lad to see if there were cattle in the field, and followed to see what delayed him, but when he saw the buggy, stopped to look after it, and although he did not think there was anything uncommon about what he saw, went back without looking farther after, or seeing, his son. He says Phelps passed first and Cozier passed 10 or 15 minutes after him, and again he says Cozier passed *before* Phelps. Again, he says he did not see Cozier till he got to the corners, and again, he first saw Cozier's wagon fifteen or twenty rods before it got to the corners. Again he tells you Phelps passed before Cozier, and Cozier overtook and passed him, yet Cozier, he says, went *slower* than Phelps. Again he tells you he saw Secord on Saturday, but he didn't tell and he don't know what he swore to. Again, he says Higby told him what *Secord swore to*, and yet again, he says Secord told him all about it, the place, the color of the horse, the dress of the man who got out, &c. Then again he tells you the only reason he noticed the man get out, was "because the road would be shorter to go to Michigan Centre, than to go across the lot." This was an incautious expression, it shows the witness assigning as a reason what could not strike his mind; this place is four miles from the Centre, houses and mills are scattered all along the way, and how could he conclude the man was going to the Centre, or think he had better have taken the road. I might add to the contradictions of this witness, but I have

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given enough to show you that he came to swear to a solitary point, and the moment he was led from that, he was at sea and swore at random.

I must refer you to the testimony of C. H. E.Beeman. In this witness we find few palpable contradictions of himself; he is an intelligent, cunning lad, and doubtless profited by the experience of others; indeed he tells us as much. You will remember the pert, self-satisfied air with which he exclaimed, he had asked his father on leaving the stand, "if they had laid him out, and told him if they hurt me, I will cut my head off." He came armed for the encounter; and it will certainly strike you that a lad of his age coming to swear to the truth, and that truth one single simple fact, would not thus prepare himself to "cut his head off if laid out." He alsc tells you, that until inquired of a few days before he came on the stand, by Bildad Bennett, "he never told what he saw. He had made up his mind not to tell unless he was asked." Is it not passing strange, that a boy seeing a man get out of a buggy would make up his mind never to tell of it? There is something so peculiar in the manner in which he tells of his having first revealed this secret that I willl readit to you. He says on the Wednesday before he was examined, "My father and I were loading wheat, and he he had started home when Bennett and Cozier came and called me to the fence. Bennett asked me if I knew anything of two men coming along, and one getting out and over the fence, and I told him just as I have told here. He said he knew I was at work fencing there at the time, and I must have seen the men come along. Before he asked me any questions, *he told me he knew I was at work,* and must have seen Phelps and the other man come along in a buggy, and then asked if I didn't see them." He can scarce be censured for so easily breaking his vows of secrecy to one who like Bennett could *tell him all he saw.* Again he tells you he did'nt want to be a witness; but yet he expected they would come for him, altho' he never told what he saw. There are fewer palpable self-contradictions on the part of this witness than the others, but if you glance over his testimony, you will perceive that there is a wavering air of insincerity pervading it that goes far to stamp the entire as false.

I next refer you to the testimony of E. Taylor, who you will find contradicts himself as follows. He says after Beeman had testified he had a conversation with him; he told Beeman he saw the *same* man, and again says he did not say the *same* man. He tells you he did not tell Beeman the man had a bundle with a red handkerchief; pressed a little farther on cross examination he says he told Beeman the man had a bundle; that there was a red handkerchief on it, and that the man was rather tallish. He tells you that on this day Penfield was at Detroit under arrest and seeing the blunder, he says he is mistaken in that, but he was away somewhere. He says he met Ladue near the mill and spoke to him about paying a debt in lumber, but he don't remember what answer Ladue gave; again he says Ladue said he sawed some at the mill; and again he don't know if Ladue ever attended the mill.

I do not wish you to suppose, gentlemen that in these I have given all the self contradictions of these witnesses. I have noted others but I dare not tresspass too far upon your time and hurry on to point out

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some things in which they could not well be mistaken or forgetful and in which they contradict each other. Old Beeman says, when he saw the buggey he looked no farther after his son but he returned to him in the field after a little. Young Beeman says his father followed him to the house and brought him back to the field. Old Beeman saw no wagon but Cozier; young Beeman says Zeikels had a second wagon and was between Cozier and Phelps. Young Beeman says that it was only after he heard the testimony of Phelps, he made up his mind not to tell what he saw. Taylor says the week of the arrest he asked young Beeman if he had seen a man with a bundle along there, and B. said he had not. Old Beeman says he never spoke a word of what he saw to any one till he told it to Higby on Saturday. Young Beeman says he and his father spoke of it on Wednesday after he saw Bennett; that they went together on Thursday and fixed on the spot where the man got out; and they went there again afterwards; yet they don't appear to remember the spot agreed on, for young Beeman says they got out before they passed the pond; old Beeman says after they passed it.

These contradictions may seem trivial in themselves, but you must remember, gentlemen, that where witnesses swear to a short and simple story, easily agreed on, their falsity must remain undiscovered, or be revealed by trivial surrounding matters. We could not hope to shake them, as to the man having got out of the buggy; that we knew they had agreed on; but in every trifling detail, that would not probably be agreed on beforehand, we find they wander and contradict themselves or each other. In reference to the two Beemans, I will remark that they are distinctly contradictedby other witnesses—Mr. Chapman, Mr. Spaulding and a number of others who went to the field, and testify, that from where the old man says he was at work, he had a full view, and could see his son all the way to the place where the son stood, while he says he quit work in search of him. These witnesses placed themselves on the identical spots where old and young Beeman say they stood, and saw the man get out of the buggy, and tell you if they had been there as they state, they must have seen each other—yet one says he was looking for the other. They also tell you that old Beeman could not have seen Cozier's wagon in the place he states; and that young Beeman could not have seen it pass by Phelps, as he states, even if it had occurred. You have viewed these premises yourselves, and I feel well satisfied that the result of that view was to impress your minds with the belief that these witnesses have been guilty of perjury; that these defendants did not vainly boast they could get men who would swear for them at any time.

I think gentlemen, I might now safely leave this branch of the case; but there are one or two other ear marks of falsehood, so plain that although loathe to trespass on your time, I cannot pass them by. You will notice that these four witnsesses came from different directions to nearly the same spot, and at the same time; and although they each claim to have had peculiar business there, the moment they see what they have testified to, the *business* is forgotten and abandoned. Thus, old Beeman quit his work to find his son; he saw the man get out of the buggy, did'nt think it strange, yet although the son stood in plain

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view, within twenty rods of him, he walked straight back to his work, and looked no farther. Young Beeman went to see if there were cattle in the field, but the moment he saw the buggy he forgot his business, and wanted to see the man safely into the field, and then went to the house. Secord came down from the distilery, over a mile to look for a beetle and wedge; he did'nt find it; but he saw the man get out of the buggy and we hear no more of the beetle and wedge. Taylor goes from home in search of a boy; goes round by the mill to see if he can find Zeikle's boy; hears Zeikle himself is likely to be from home; meets a man with a bundle and passes Zeikle's door; never stops to inquire about the boy, and never gets one after. Surely this might be enough; but there is still another sign. You will remember gentlemen, that in his opening speech on the 8th day of July, the counsel for defence told you they would prove that on that day Lake and Phelps came along south of Leoni, with the box in a red handkerchief; that Lake got out, put it under his arm, and went across the fields towards the Centre; now the question is from whom had counsel learned these *facts?* Not from Secord, for on the 22d July he tells you, "I did not know for certain till I was subpœned yesterday, that I would be a witness." And again he says:

"When Bennet spoke to me on Sunday, it did not occur to me, that about the men in the wagon would be important; never did before Sunday; don't know that it ever occurred to me that about the wagon would be important." Nor from old Beeman, for on August 5th, he says:—

"I came here yesterday; was subpœned on Monday by Cozier.—Last Saturday Higby asked me what I had seen, and I told him, and that was the first time I ever told any one what I had seen."

Nor from young Beeman, for on August 5th, he says he saw Bennett and Cozier on Wednesday. "When I saw Bennett and Cozier was the first I told of what I saw."

Nor from Taylor, for on August the 9th, he tells you he was subpœned a few days before, and until then, never told what he saw; or said any thing about it, but to once ask young Beeman if he saw such a man, when B. replied he did'nt recollect seeing him. It is clear then that the information did'nt come from any witness produced on the stand. How did it come. Was counsel told he might go on and state it boldly, that the proof would be forth coming? It looks like this, for it was just the place and Incident to be selected for a successful perjury. Before leaving this subject, I must call your attention to a mark of falsity in a witness which is laid down in the books—1 Starkie, p. 547—laying down several indications of insincerity in a witness, says "an affectation of indifference, are all to a greater or lesser extent, obvious marks of insincerity." Apply this rule to these witnesses; old Beeman says he never spoke of what he saw, to avoid being a witness; yet one of the defendants is married to his niece. Young Beeman never spoke of it for the same reason; and Taylor, when the constable first asked him, denied having seen the man, and only acknowledged it when he was subpœned, and found he had to come. Add to this, gentlemen, the absurd improbability, that in seeking secrecy, Lake would take the box out of the buggy, and carry it four miles un-

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der his arm, along a public highway, and then ask yourselves what marks of falsehood does this testimony lack. It is improbable—the witnesses contradict themselves, and contradict each other; they are contradicted in material points; no account is given how their evidence got to the knowledge of the defenee. Although the most important witnesses for the defence, if true, they are not subpœened till almost its close; although speaking to one point, they straggle in, one now, and one again, over a space of some 17 days. It was just at the commencement of these delays, of which so much has been said, that these witnesses were subpœned. Sum up all of these circumstances, gentlemen, and tell me how you can avoid the conviction that these witnesses are false? or upon what grounds you can give the slightest credence to a word they uttered.

Although not directly connected with the narrtive of Phelps, I may in this connection dispose of the testimony of Arnold. You will remember he was called to prove that Lake had a bundle, in a red handkerchief of course, at Filley's on the afternoon of the 11th April.—That was the single point that he was to swear to, and when he passed beyond that he contradicted himself in every sentence. If I could feel assured that you remembered his appearance on the stand, I would dismiss him without a single word, but lest you should not, I will read to you some portions of his evidence which are characteristic of the entire, and will serve to refresh your memories in relation to him.

(Here counsel read from the tstimony of Arnold.)

You perceive that four or five times he repeats that whatever day he saw Lake, he went to Quigley's at Brooklyn, the second day after.—He can't be mistaken about this. He gives a statement of how he was employed the day he saw Lake, what he worked at the next day, and *is certain* the third day he went to Brooklyn and stayed over night at Quigley's. But unfortunately for the reputation of Mr. Arnold, Quigley and Miss Ellen Quigley have a distinct recollection of the only occasion when he stayed over night at their house, and swear positively it was on the 18th of April. They cannot be mistaken for besides other reasons for remembering, they remarked the next day on hearing that all the people at the Centre were arrested, that Arnold was *not*, for he was at their house the night of the arrests, which was the night of the 18th, or the morning of the 19th. You will notice that he swears by the entries in his account book, yet like Bildad Bennett's docket, the account book is not here, it may be good enough to *swear by*, but not good enough for inspection. Produced, however, we are fortunately able to gather some idea of its *accuracy* from the following portion of his testimony. You will remember that Sunday was the 3d of the month. He says:

"Can write and keep my own books, looked last at the book on Sunday, made a charge there last Sunday, with the dates, it does not concern this case what dates—the dates I put down were the 3d, 4th and 5th of this month, it was Monday I made the charges. Mis-spoke when I said the 5th—I made a charge for the 5th—worked for Laycock on the 3d and 4th—worked for him on Sunday—now you have it.

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Unless aided in your memory this testimony gives but an imperfect idea of his accuracy; you will recollect that his 3d, 4th and 5th came out only as he was each time laughingly reminded that he was still making entries in advance, and he was so ready and willing to change the date of his entry, that a sober face, might have led him on to the twentieth, perhaps the *fiftieth* of the month. I leave Mr. Arnold. I know that when he left the stand you did not believe a word he uttered, and I know his credibility is not much strengthened by association, of being a witness to the same point with the Beemans.

Phelps states that on the evening of the 11th he was again at Coykendalls, that Myers and Corwin went with him from there to the Centre. These, the leading and material facts of this testimony, are corroborated by the witnesses for the defence; but it is sought to establish a contradiction by Coykendall, who swears that Phelps paid for twenty cents' worth of liquor, that was carried by them to the Centre. Kellogg and Smith also prove that they saw him pay for liquor, but their evidence amounts to nothing, as Phelps himself admits that he treated several times and paid. Coykendall is the only one who swears he paid for the liquor that was carried away. Apart from its bearing on the truthfulness of Phelps, it is entirely immaterial who paid for the liquor; and if Phelps paid, why should he deny it? But to set the whole matter at rest, Phelps says Corwin paid for it; and at page 155 Falkner says Corwin asked Fitch to drink out of the jug, and adds, "Corwin told him he need not fear it, as he had paid for it."

The next portion of Phelp's testimony is a detail of the conversation and occurrences at the Centre on the night of the 11th April, when the match was delivered to burn the depot at Niles. As this portion of the case is important, and if true stamps the impress of guilt upon many of the defendants, I will detain you by reading a portion of it. After stating that he, Myers and Corwin arrived at the Centre, he proceeds at page. 139, as follows:

"Arrived after dark, and stopped at Filley's hotel, found Mr. Falkner there. Soon after we got there, H. Hay, and Lake came in, and soon after Fitch came, and by and by Wm. Hudson, came in: don't remember any one else. Fitch took me on one side and said Filley had told him that if I was going to Niles at all, I was going that evening. I told him that was my object in coming there; he said a lot of fellows had been hanging around there, and he had sent Filley off with them fishing. I asked him for some money, he said he would not pay us anything more until after we returned, but if we succeeded in burning the depot, we might come back and take the oxen, and they would pay over the balance of $60. I know Corwin, Myers, and Falkner were in hearing of part of this talk; I spoke loud, told them I wanted them to be ready to pay me when I got back, that I was going to Minnesota; Fitch, Corwin and Lake went out of doors together, and Fitch said to Lake and me that he supposed we knew the consequences of bad faith towards them—that if we made any exposures we had better dig our graves before we went; then said he would give us a match all ready, which if we once got inside of the depot there would be no difficulty about it; said we should have to get some turpentine or camphene, and put it into the box out there, as we could not well

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carry it with us, said our best way was to take it in our buggy and go back to Grass Lake, and one stay there and the other go farther east and get on the morning train at different places; said the match was on the same principle as the one he had furnished Gay with, and it would not fail, as they had tried it several times; went into the house again and spoke of money, I wanted some in advance, and Corwin gave me fifty cents, saying that would help to pay for drink on the road anyhow.

A remark was made in the room that if we were successful in this and other plans they would be able to make a raise out of the company. Fitch said if you are successful, when you come back we will go to Kirkendall's and have a bust; Corwin said yes, we will tear his bar down. When we spoke of money, Fitch said it would be ready when I came back from Niles; that he had plenty of it that was not yet galvanized, but would be before I got back, and I could have plenty of it; that they would be flush when I got back.

Something was said about my claim before the Legislature; Fitch wanted to know how I got along with it; I told him I should probably get about $3,000. Fitch said to Corwin we had better fix them off before Filley gets back with the men fishing. Corwin went to a small room, unlocked it, and brought out the match under his arm, and placed it in the buggy, and said there, boys, it's all right; as he went out with the box nearly all hands started to follow; I got up and shut the door, and told them they could not go out; they then went out by the north door; Fitch went away before, after telling Corwin to go and get the box."

It is claimed by the defence that the testimony of Amanda Fitch, Mr. Cross and Mr. Hudson, precludes the possibility of Fitch having been at Filley's on that night, for the length of time impled by Phelps. A very few words will dispose of this objection. As usual, when Phelps is sought to be contradicted, the witnesses begin by corroborating him. In this instance, they all prove his presence there that night, but differ from Phelps, Faulkner, Lake, and each other, as to the time he remained there. Thus Amanda Fitch says he was not absent from his house over five or ten minutes—Mr. Cross says 8 or 10 minutes, and by turning to Mr. Hudson's testimony, you will perceive he makes it over half an hour, for he says he found Fitch standing outside, went in and Fitch followed him. There was then some drinking, after which Fitch and Filley talked some 10 or 15 minutes. After this he says he *did not see* Fitch, but he does not know when he left. But the accuracy of this witness cannot be at all relied on, for though he remained till all left he never saw the box. I will hereafter show you that Hudson corroborates Phelps in many essential particulars, but for the present pass from this branch of the case as in connection with the testimony of Faulkner, I will show you how unerringly the occurrences of this evening indicate the guilt of the defendants—how fully Phelps is corroborated, and the impossibility of his evidence in this regard being untrue. I will also for the present pass over the evidence of Phelps in relation to his interview with Filley at Jackson; in another connection I will refer to its corroboration and show its important bearing in the case, and will now briefly call your

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attention to other grounds of discredit urged against this witness.—Reference has been made to his *demeanor* on the stand and his conduct in reference to the jury and counsel.

Surely the phillipic indulged in by the learned counsel in this respect, must have been an after-thought, and part and parcel of elaborate *preparation*. I cannot but think that *at the time*, the testimony was given, he must have been favorably impressed, as doubtless you were, with the bearing of the witness. Examined at great length and thro' vast detail, tortured by a cross examination through several days with great ability and severity on the part of the learned counsel, he yet held the even tenor of his way, calm, prompt, and frank, thoughtful but not reluctant; willing but not forward; never volunteering, but always responsive, he stood through the long ordeal, and came out not only unhurt, but I submit to you, with his whole story strengthened by the severe test which failed to shake it.

But, says the counsel, he impudently assailed William Dyer, a respectable citizen of Indiana, and denounced him as the identical horse thief Lozier. Most singular thing for this defence to revive!

You recollect the scene. Hawley had just poured out his afterwards recanted perjuries on the head of Phelps. Phelps was again put on the stand by the defence to lay the foundation for new impeachments.

"Did you not so tell William Dyer, of Indiana?" &c. "I don't know him," said Phelps, "produce him and I will say if I ever even saw him." And in came William Dyer, stealing with trembling paces over the floor. Phelps fixes his eye upon him, and declares his belief that it was Lozier the horse thief. Gentlemen, is this a circumstance against Phelps? Would he thus have denounced the man, if he had not believed he spoke the truth, when he knew, if untrue, fifty witnesses could be brought to contradict him? Gentlemen, he may have been mistaken in the name of Dyer, but not in much else. He sent to Indiana for witnessess to meet this William Dyer. Hawley was arrested—Dyer was about to be; he fled from the State, the "respectable citizen of Indiana" returned to his native tamarack and his miserabl testimony was stricken in disgust from the case.

But Phelps is charged to have on several occasions intruded himself offensively on this Jury. I appeal to you if this is true. Has he not, on the contrary, invariably been reserved, kept himself aloof, and behaved so modestly as to have attracted your observation and gained your approval? Aye, but he sat here at the head of counsel for the Prosecution, "*observing* their course." Withering remark! Bitter sarcasm! I saw my leaaned associates took it very quietly, showed no "visible sign," but bore it as philosophically as if they had sat at the bar before, and with others, which made it quite as humiliating as when *headed* by Henry Phelps.

And all this tirade poured out on this bar because on an attempt being made to impeach Phelps, he was permitted, according to invariable custom, to sit by counsel and suggest what might be useful in process of examination!

Time will not permit me, nor does my own sense of duty prompt to pursue this further. The learned counsel strikes at both friend and

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foe, and for the sake of a hit at Phelps, would even sacrifice his own colleague. One *would* have supposed that in view of all that *was* proved and offered to be proved, *one thing* would have been permitted to sleep. I will not for a petty triumph inflict a blow on one whose own associate would not spare him.

You have seen Phelps from day to day, his incomings and outgoings, his patience, candor, and gentleness. You have seen the storm of hatred poured down upon his head. You have seen Hawley and Dyer conjured up from swamp and morass, and kindred spirits in swarms gather to destroy him. All that malice could suggest, all that ingenuity could devise, all that perjury could execute, was done. He stood still; the storm passed; and Phelps and his testimony remained unhurt amidst all this "war of elements."

But it is said his story is not probable; that Fitch had no motive to engage in such crimes; that these defendants are too humble, obscure and few, to have attempted such acts against a powerful company; that most of them were poor and could not have contributed to a fund for burning Depots; that Phelps stands a self-acknowledged liar, because he made false pretences as to his mission among them, and that other improbabilities exist, which I dare not detain you to even call up for investigation.

How these and all the other improbabilities suggested in the story of Phelps disappear on a little reflection.

These men were *not* weak but strong, constituting a very considable portion of the town of Leoni; strong in hatred of the Railroad; strong in their union against it; strong in their criminal successes; strong in all the elements of a dire and fearful conspiracy; each one could readily procure the respective amounts which they are alleged to have contributed for the arson of the Depot, and each one had fierce desire enough for its destruction to sacaifice his last coin to reward the incendiary.

How weak to talk of want of motive in Fitch to be participiant or adviser in such offences, when he is found through years denouncing this Road, uttering bitter maledictions against it, justifying every outrage upon it; when he carried around with him through the long day and the quiet night the spirit of undying revenge, which haunted him to the last? How futile to denounce Phelps because he did not unfold to these prisoners the true object of his action, and defeat at once every chance of developing the deep seated wickedness of Leoni?

The story, gentlemen, is natural and probable all over. Not only is it corroborated, consistent and inherently true, but most *probable* in every aspect. It is probable, as being the almost necessary result of the threats, conduct and combination of defendants.

They had determined on vengeance; they had entered on a wild career of crime and recklessness. They had set the laws at defiance; brought themselves to believe in the corruption of Courts and the unmitigated depravity of all mankind. They had abandoned the sweets of domestic bliss, and the repose of rural life. Their Sabbaths were desecrated; their nights consumed in revels; visions of fiendish violence perpetually flitted across their minds, and details of their execution furnished the richest enjoyment.

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Gentlemen, all this, and far more than all this, does the testimony in this case tell us. I will not enlarge upon the theme, but with your permission I will read to you a page of moral philosophy by an eminent writer, which may furnish some food for reflection, and perhaps strike you as having some application to the case before you.

["The man who habitually violates his conscience, not only is more feebly impelled to do right, but he becomes less sensible to the pain of doing wrong. A child feels poignant remorse after the first act of pilfering. Let the habit of dishonesty be formed, and he will become so hackneyed in sin, that he will perpetrate robbery with no other feeling than that of mere fear of detection. The first oath almost palsies the tongue of the stripling. It requires but a few months, however, to transform him into the bold and thoughtless blasphemer. The murderer, after the death of his first victim, is agitated with all the horrors of guilt. He may, however, pursue his trade of blood, until he have no more feeling for man, than the butcher for the animal which he slaughters. Burke, who was in the habit of murdering men for the purpose of selling their bodies to the surgeons for dissection, confessed this of himself. Nor is this true of individuals alone. *Whole communities may become so accustomed to deeds of violence,* as not merely to loose all the milder sympathies of their nature, but also to take pleasure in exhibitions of the most revolting ferocity. Such was the case in Rome at the period of the Gladiatorial contests; and such was the fact in Paris, at the time of the French revolution.

This also serves to illustrate a frequently repeated aphorism: *Guem deus vrelt perdere prius demental.* As a man becomes more wicked, he becomes bolder in crime. Unchecked by conscience, he ventures upon more and more atrocious villainy, and he does it with less and less precaution. As, in the earliest stages of guilt he is betrayed by timidity, in the latter stages of it he is exposed by his recklessness. He is thus discovered by the very effect which his conduct is producing upon his own mind.

Thus we see, that by every step in our progress in virtue, the succeeding step becomes less difficult. In proportion as we deny our passions, they become less imperative. The oftener we conquer them, the less is the moral effort necessary to secure the victory, and the less frequently and the less powerfully do they assail us. By every art of successful resistance, we diminish the tremendous power of habit over us, and thus become more perfectly under the government of our own will. Thus, with every act of obedience to conscience, our character is fixed upon a more immoveable foundation.

And, on the contrary, by every act of vicious indulgence, we give our passions more uncontrolled power over us, and diminish the power of reason and of conscience. Thus, by every act of sin, we not only incur new guilt, but we strengthen the bias towards sin, during the whole of our subsequent being."

Gentlemen, I have shown you how wonderfully corroborated is this testimony of Phelps. It does not rest upon him for its truth, even if we conceded his untruthfulness. His evidence in this case stands so fortified, so necessarily true by reason of the corroborations, it is so

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full of consistencies, that we must still believe it. Speaking of the power and effect of such consistencies and corroborations, Starkie remarks: "So far does the principle extend, that in many cases, ex. cept for the purpose of repelling suspicion of fraud and concert, the credit of the witness himself for honesty and verity, may become wholly immaterial."

I have heretofore noted the vast detail and variety of circumstances which the testimony of Phelps includes and goes over. The Court will instruct you that it is one of the great ear-marks of a truthful witness; keeping nothing back; disclosing every pertinent thing; and affording to the adverse party every opportunity of following in his footsteps, and detecting his errors; "affording a wide field for contradiction, if his testimony be false."]

I have heretofore pointed out to you, in canvassing his testimony before you, many of the inherent evidences of truth which it contains. I now beg to submit if it is probable, nay, if it is possible, for living man to have fabricated such a story; to fill it with details, dates, time, space, and circumstances; changing from point to point, and embracing such a variety of persons and incidents; to cling to it through every effort to disturb him; and come out from it as uncontradicted as this man does. If truthful, he might narrate and renarrate the simple truth, and never vary; but if false, I hold that it would be a moral impossibility.

I submit to you, gentlemen, that the story of Phelps is natural, probable, consistent, corroborated; unlikely, if not impossible to be false, under all the circumstances; and is stamped with every evidence of truth, the whole truth, and nothing but the truth.

Gentlemen, having thus passed over Phelps and his evidence, save as to the two points yet remaining to be hereafter noticed, I turn to Lake, and his. I will not consume much of your time on this branch of the case. If I have succeeded in establishing before you the fact, that Phelps' evidence, in all material respects, is in the law and in reason entitled to credence, then it is useless to travel over that of Lake in detail; for as far as it goes, it is substantially the same as Phelps; is corroboroted by the same or similar circumstances and witnesses; contains many of the same inherent marks of truth; is equally consistent and probable; and in some of its features has not even the grounds of suspicion which counsel supposed they detected in the other.

Lake is still a young man. True, he too has been to State's Prison; but not for an offense which even at common law would have rendered him infamous, or barred him from testifying in a court of justice. He was convicted for procuring to be carried into a county jail, a file to aid a friend in making his escape. It was a violation of law; it deserved punishment, and he received it. But I submit to you that such an act, and especially done by a mere youth, as he then was, in behalf of an imprisoned friend, does not necessarily evince a bad heart; nor does it in law or morals constitute any reason for doubting his truth, or refusing him credence. He has lived long in the State, yet there is no impeachment against him. He is

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not successfully or materially contradicted; and but one fact has transpired to justify us in suspecting his morals, and that but in one respect, and not pertaining to the truth of his story here.

He and Phelps in States Prison; they were not partlcularly friendly there, indeed at times were inimical. You recollect, and I wi ll not detain you to rehearse, the accidental meeting between himself and Phelps after both were released from Prison; and the circumstances under which Lake became engaged in the service of the Rail Road.

I *will* recall to your minds his demeanor on the stand before you. I appeal to you if it was not prepossessing, frank, and kindly. He answered fully to direct and cross examination; gave details at length and appeared to be neither moved by prejudice, or warmed by zeal against these prisoners.

Why should Heman Lake not be believed? The learned counsel for the prisoners amused himself through a four months labor, by picking out and serving up for ycur benefit, various little differences between the narrative of Phelps and Lake; and says, that when present at interview with some of these defendants Lake details some incident, remark, or fact additional to that related by Phelps, or *vice versa;* that he sometimes ascribes a remark to one defendant when Phelps puts it in the mouth of a different one &c.

Gentlemen, we are not engaged in children's play, but in a serious struggle in the battle of life. Grown up, intelligent and experienced men, are not by such means to have their minds diverted from the truth. You need not to be told that different persons will narrate different facts, and words, and scenes, in different language; that one will forget, or remember a distinct fact which another may not; that one hears or observes what another does not. Opportunity, strength of memory, power of observation, distinctness of vision; a large variety of circumstances, all tend to produce a variety of descriptions of the same thing, from a variety of narrators, and yet the tales of all will be substantially true. In the language of Starkie, "it is to be observed that partial variances in the testimony of different witness, on minute or collateral points although they frequently afford the adverse advocate a topic for *copious observation*, are of little importance unless they be of too prominent and striking a nature to be ascribed to inadvertence inattention or defect of memory;" and he might have added further to the list.

Apply this principle to the alleged variances between Phelps and Lake, and it covers nearly the whole of them. Nay, gentlemen, I submit, that the alleged differences strengthen the testimony of these witnesses, for they repel the idea of concert, and show that each gave "the substantial truth under circumstantial variety," just as it occurred to their memories without practicing to swear alike.

But the Counsel tells you Lake swears that in arriving at Filley's they enquired of him if "the boys" were there, although according to his version he and Phelps had just passed Leoni where "the boys lived." The answer is ready. Only a few of "the boys" lived at the village of Leoni; and again, Phelps and Lake, both claim to

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have passed not through Leoni, but by a different route, and hence the greater the pertinency and likelihood of the enquiry for "the boys."

But we have some more grave objections. Counsel tells us that Lake's statement as to the interview with Filley when he arrived there on the 11th of April is false, and unfortunate for his truth, because Kane and Allen, who came down to sport, took Filley off to the pond, about half past twelve, before Lake came, and kept him there till between 3 and 4 o'clock P. M.

This presents no difficulty. Turn to the testimony. Phelps and Lake got to Filley's about noon. Phelps drove off; Lake "got something to eat, and being sick soon went to bed." Soon after, Kane and Allen came, took their dinner, and went off with Filley; no discrepancy whatever; and Lake himself testifies to the fact that they were there.

But Lake blaims he only slept an hour, and came down and renewed his talk with Filley, when in fact Filley was off at the pond.

It is not likely that Lake, who it is conceded was there that afternoon, would locate an interview with Filley when he was absent; knowing it could be readily disproved. It is far more likely that an interview did occur, but at a later hour; that Lake worn out with fatigue, and weak with the remains of sickness, sank into a deep sleep, which lasted much longer than he then supposed or now recollect.

But counsel tell us that if he was sick before, he must, like Don Juan, in the ship-wreck have "fallen sicker" to have thus enlarged his repose.

Oh! What a fall was there my countrymen, from the classic and chaste reading of the virtuous Addison, clear down to the forbidden pages of Don Juan! I feared the learned counsel, having given us a slight specimen of his light readings, was about to continue with the ejaculation of the sea-sick lover till he would have to exclaim with his hero as he grew sicker,

"For God's sake let me have a little liquor,
Pedro Baptisto, help me down below."

Gentlemen, I leave such trifling and return to Lake. The hour of adjournment has about come, and I will not pursue his alleged contradictions. Several of those against him, have already been answered in the course of this argument in reference to Phelps, and as to anything which may remain, you will find if it is deemed necessary to pursue them, that they can be quite as readily disposed of as those I have already refered to.

The corroborations of his testimony are as palpable, thick and convincing, as in the case of Phelps, and all the reasons why he should be believed, arising from consistency, demeanor, corroborations, probability, detail and inherent truth of his story, which were urged on the argument as to Phelps, here exist and might be again repeated. He had no revenge to gratify against a single defendant. He is still in early manhood, with feelings apparently fresh and kindly. No motive to perjure himself is suggested, and I insist that

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no man without more years, more experience, education shrewdness and talent than Heman Lake possesses, could have woven such a tale, or adopted it from the rehearsal of another, adhere to it with such exactness, giving in dates, time, place and circumstances, and cling to his story through such a cross-examination, come out from it unscathed and remain to the end so uncontradicted, unless on the hypothesis that it was the truth he narrated and adhered to. Had it been a mere fabrication, confusion, contradiction and disgrace would have marked its progress and overwhelmed its author.

I leave him with you: you will understand, that fear of trespassing on your kind attention, alone, prevents me from more fully vindicating his evidence, and refuting the assault made upon it. I feel it is not necessary, nor will I stop to give an analysis of what he testified to before you. Suffice it to say, that he mingled with these defendants freely, was trusted and relied upon by them; that they freely conversed and unbosomed themselves to him; that they deemed him a member of their conspiracy; an agent to effect and consummate their vengeancee, and he was hallowed in their sight by supposed maturity in crime.

Thus familiar with them, their thoughts, feelings, designs and deeds, he confirms to you all others have said of their deadly malice against the Railroad company; of frequent depredations against their rights; of fearful obstructions on their track, and of a deep determination to continue on their lawless course, until they brought the company to terms. He swears to you distinctly that part of these defendants, whom he names, had contributed to the burning of the depot in Detroit—rejoiced over its destruction, and were intending, and devising ere long to gloat their vengeance with new fires, and continous destruction, of every depot along the line of the road.

I will not trouble you furtber to-day. To-morrow morning I will briefly refer to the meeting between Phelps and Ami Filley at Jackson, after the attempt to burn the Niles depot, testified to by Van Arman, Clark, Spaulding, and Phelps; to the testimony of Faulkner, and to the declarations by several of these defendants on board of the cars after the arrest, as proven by Dr. Hahan and others. I will then point out more distinctly than has yet been done those of these defendants who stand identified with the overt act, charged in the indictment, and, having done this, I will hurry on to the close and leave the rest with you.

(In consequence of the temporary illness of one of the Jurors, the Court adjourned from day to day, until Thursday, Sep., 25th, when, the Court being in session, Mr. Van Dyke continued his argument as follows):

Gentlemen :—I cannot refrain from expressing my gratitude on this beautiful morning, at seeing Court and Jury before me, all again in the enjoyment of reasonable health and vigor—prepared to go through with what yet remains of this protracted trial. But especially must it cheer you, as it does me, that there is every probabili-

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ty of to-morrow's morn finding us free from all these labors, responsibilities, and cares, to breathe fresh, unburthened by them.—I announced to you, at our last adjournment, the few points which I deemed it proper to yet call up and discuss before you. I will proceed to them at once, but before doing so beg to briefly call to your minds that portion of the case and argument already gone through. (Here counsel reviewed briefly his previous argument, and continued):

You of course recollect the scene at Filley's bar-room, on the evening of April 11th, as described by Phelps and Lake. The importance of the testimany on this point is manifest, as it affects the whole case. If true, it must go far to lead your minds to a conclusion; for it tends to show that Wescott testified truly when he told you, that burning depots was within the scope and extent of the conspiracy. It proves the *modns operandi*: a match in possession of defendants to accomplish the arson, and thus links that material fact with the matches at Gay's and his use of them. It corroborates powerfully Phelps and Lake, confirms the theory of this prosecution and connects and identifies part of these defendrnts with the continnous carrying into effect of that conspiracy, of which the arson of the Detroit Depot was merely an earlier step.

The learned counsel for the defence passed this part of the case over lightly; suggested that Faulkner was a stranger, and probably confused, and that the whole affair was of but little moment.

But one theory is given us by the defence, to account for the facts testified to by Faulkner, viz:—That *there was* a scheme of wickedness set on foot there that night; that Phelps and Lake were being fitted out on a "bogus" expedition. I will go over this point with sufficient care, and feel free to say to you, and believe you will soon agree with me, that it is one of fatal force against this defence; that their theory wholly fails to account for the facts which occurred: but that that they are reconcilable with the theory of the prosecution, and with none other.

And first: Who is John Faulkner? You observed him on the stand—modest, respectful. and intellgent; his appearance striking every beholder most favorably; his recollection apparently so distinct; his memory so clear; his whole demeanor free from confusion, and enforcing the simple narrative he gave on every candid mind. He is a resident of the beautiful village of Marshall, where he has resided for years, and where, as you are assured, he has received, by his course of conduct, the good will of his fellow citizens and a reputation beyond his station in life.

I need not tell you, that he is here wholly unimpeached, contradicted, and unquestioned; even counsel on the other side, have had to admit his honesty. Thus stands John Faulkner before you. And you will bear in mind, too, that, up to the night he speaks of, he had no acquaintance with Phelps or Lake. Now hear his story, which I must give you in his own words, and at some length.

"I reside at Marshall; been there seven years; am a cartman; remember on the 11th April last, going to Michigan Centre; left

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Marshall on the cars, got off at Grass Lake, and went back to the Centre on foot; at Grass Laee saw Mr. Clark, the only man I knew; I had an axe and small budget with me; when I arrived at the Centre I stopped at Ami Filley's tavern; Filley was not there; Mrs. F., and a girl they called Bridget, and a boy and a Mr. Lockwood were there; L. soon left. I asked for supper and lodging; while at supper, Phelps, Lake, and a man they called Wm. Corwin, and Daniel Myers came into the bar-room; found them there when I went out.

When I first went into the bar-room they were talking low together; could only once in a while hear a word; heard these words from Corwin, "yes after we pet through:" and "think we can come it." After they got through they went to the fire-place, and Phelps said loudly, "boys, when I get back from Niles, we will have a time." Corwin replied, "yes, we will, we will tear down Kirkeneall's bar, and this too;" something was said about pay; Corwin said, "I am willing to pay something in advance," and took out his wallet and gave him something. Phelps remarked, "this will help pay expenses over the road, all paid in advance helps like hell."

They continued to talk, and went out doors, and soon after came back with two others, whom they called Hudson and "Hi. Hay." They talked privately; soon a man came in they called "Capt. Fitch;" it is the same one here now; he said, "boys, how do you do?" and shook hands with Phelps; asked what's the news. Phelps replied, about as usual. He then went round from one to another asking, "what's the news." He asked Bill Corwin three several times, "what's the news?" they all went out doors, were gone about five minutes and came in again; Phelps and Capt. Fitch stood by the counter alone; the rest sat down on a bench. Heard Fitch say to Phelps, "*when you get back I shall be ready, I shall be flush then.*" Before Fitch came in, Corwin said it should be right, and money would be flush; this was the time when Phelps spoke of when he would get back from Niles.

Soon after, they all went out again, and I moved the light from the bar counter to the mantle-piece; Corwin, Phelps, Hay and Hudson, or Myers, came in agsin in a short time; Corwin unlocked a door leading to a small room, and went in the dark, he brought out a small box, five or six by ten or twelve inches in size; in locking the door he *had to use both hands, and the box slid down, but he caught it before it struck the floor*, he then locked the door and put the key in his pocket; Corwin then passed out doors with the box, and Phelps got up and shut the outside door and put his back against it, saying no one could go out, the others tnen went out a side door, and Phelps then opened the one he was holding, anb went out and left it open; I looked out and saw Corwin and Myers under a shed near; very soon they came from the shed and put the small box Corwin carried out under the seat in a one horse wagon standing near by; Lake came from the shed also; Corwin went to another wagon, and untied the horse; Lake went to the wagon where the box was, and called Corwin, and asked is "that all right?" Corwin answered

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"yes." Lake and Phelps got into one wagon, and Corwin and Myers into the other, and they droue off, that was the last I saw of them, they were about there some two hours; I saw nothing else put into the wagon; saw a jug of whiskey, but don't know what was done with it.

They asked Capt. Fitch to drink, but he refused, saying it gave him a pain in the side. Corwin told him he need not fear it, as he had paid for it. *Fitch stood on the opposite side of the wagon when they put the box in.* There was something said about going to Lansing. When they talked, they generally stood close together, and spoke low, so I only heard a part of the conversation."

[Here a box containing the match placed in the Niles Depot, was exhibited to the witneness, and he recognized it as the one, or exactly similar to the one Corwin took out of the room and put in the wagon.]

"I saw the same box the next day at Bank's office in Marshall."

Gentlemen, it *is* true then, that Phelps and Lake, Fitch, Corwin and the others alluded to above, were at the bar-room of Ammi Filley on the night of the 11th of April last. It *is* true that something peculiar and unusual did occur, and that private conversations took place between the actors. The expedition was being fitted out *for Niles*, to be performed by Phelps, and on his return, he was to be paid for his exploits, which were to be celebrated by tearing down Kirkendall's bar.

To a remark of Phelps, Corwin says "yes after we get through," and he was "willing to pay something in advance." And Fitch says "yes, when *you get back*, I shall be flush then."

You observe too, that Corwin brought the box from the small room, and was it placed as described in the buggy of Phelps and Lake, who were afterwards sent on their way.

Now, what is said of this strange scene? Is it met fairly and overcome, or is it sought to be avoided by sophistry? If the latter, it only stands out the more prominent, as not being capable of explanation or disproof on the theory or evidence of the defence.

It was suggested on argument that it was a bogus expedition—a joint operation to circulate false and counterfeit money. See the inconsistencies to which erroneous theories are driven. This defence tells us at another time, that it is ridiculous to suppose that Capt. Fitch would have anything to do with "bogus money," and that all the search of the police never found a vestige of it, or of implements to make it, about the premises of any of the defendants. But if filled with counterfeit coin, could Corwin have carried such a box, thus weighty, under one arm, use both hands to lock the door and catch the box as it slid down, before it struck the floor? If only partially filled, would not the rattle and noise of the box thus sliding down and caught, have attracted the notice of the attentive Faulkner? And as to counterfeit bank bills, it occurs to you at once that it would be an unlikely mode to be selected for conveying them through the country for circulation. But on this theory, why was Phelps to *be paid* on his return? Would *he* not rather have to

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divide the spoils with *them?* Why was his return to be the cause of so much rejoicing? Why was Niles *alone* mentioned as the place of his proposed action? You see gentlemen, that the whole transaction, everything said and done, is inconsistent with the attempted explanation. The learned counsel, who last addressed you, says that Faulkner was a stranger; confounded one with another, and heard only a "suppressed conversation." Faulkner *was* a stranger, but exhibits no likelihood of confusion. He was too cool, too observant, too intelligent, to have confounded one with another. He shows no sign of it here. He swears distinctly, and designates in open Court, without mistake or "confusion" the actors of that evening. True he did not hear all the conversation, but he saw all that transpired, and heard enough to render his narrative clear, and free from all ambiguity. The sentences he does give, are perfect in themselves and of convincing import.

But counsel say, Phelps was playing a part, "that he spoke aloud, only occasionally, when he desired a catchword to reach Faulkners ear." Faulkner only gives one instance of Phelps' speaking loudly, and he tells you he heard the expressions from Corwin and Fitch with perfect distinctness, and which of course Phelps could not have produced as cues or catchwords.

But it is further objected that it is manifest that Faulkner is mistaken in supposing Fitch spoke of "being flush" on Phelps return, because if heard by him they would also have been by Hudson who swears he did not hear them. Sulely this is a *non sequitur*. In the language of Starkie on evidence. "If one witness was positively to swear he saw or heard a fact, and another were merely to swear he was present, but did not hear or see, and the witnesses were equally faithworthy, the general principle would in ordinary cases create a preponderance in favor of the affirmative." But again, you will recollect that Hudson was a most inattentive observer. He says "I do not pretend to speak accurately as to time," does not know when Fitch left the room; he did not see even the box, although he says, one of the defendants, (Hiram Hay,) on the way home, "spoke of their having a box." Hudson confirms several of the expressions, and circumstances testified to by Faulkner, and contradicts none of his statements. He merely did *not* see, or did *not* hear.

Again, counsel say, Fitch had left the party and returned home, before the box was placed in the waggon, and therefore Faulkner is mistaken in sayiug he stood on the opposite side of the waggon on the occasion of putting in the box. Who proves this? If reference is had to the testimony of Cross and Amanda Fitch, I have examined it heretofore.

But it is said, that neither Lake, Phelps or Hudson pretend that Fitch was present at the place assigned him by Faulkner. Gentlemen, I will not delay to look at the evidence of Lake and Hudson, but turn to your book of evidence and on page 142 read the statement of Phelps. "I did not send Corwin to the small room to get the match; Fltch told him to do it, and *went and waited till we came out.* Something was said of words falling amid a drunken revel.

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Fitch did *not drink*, "on account of a pain in his head." There is proof of drinking by others, and of anticipated revelry, when some deed of evil should be performed. There is no evidence that any one was drunk that evening. The counsel remarked that he saw nothing strange in Corwins speaking of a revel when Phelps should return laden with three thousand two hundred dollars from the State of Michigan; or with moneys from Masachusetts; or a fotune from Minesota.

What think ye of such a fair defence? What reliance shall be placed on such "arguments?" It was to *Niles*, Phelps was to go, *not* to Lansing, or Massachusetts, or Minnesota. It was from *Niles* he was to return. Then was the revel to be had; then when gloating over the details of the burned depot, and the trinmph of vengeance over the interests of the Rail Road, was Phelps to be crowned a Hero. and to be rewarded for his deeds.

I will not pursue this further. If the defence had any other theory to account for the transactions of that night, they were bound to present it, failing to do so, the narrative stands untouched.

"Error wounded writhes in pain,
And dies amid her worshipers."

I will not comment further on the force and effect of this startling evidence. There it stands, pressing this unfortunate defence on to its overthrow.

Gentlemen, Phelps and Lake proceeded to Niles. There they acted the part described by them. They returned to Jackson; and Ami Filley, anxiously expectant, enquired of the result, heard of the failure to burn the depot, and invited Phelps to go to the Centre "and meet the boys." So says Phelps; and I submit this as fully corroborated, and proven by Van Arman, Clark and Spaulding. But says counsel, "it is a concerted corroboration;" the versions differ; Van Arman heard only a part of that testified by Phelps; Clark heard nothing.

Spaulding says, on the occasion referred to, "I saw Filley at the Jackson depot, waiting for the cars from the west; when they arrived Phelps stepped off, and Filley approached him, and talked *privately with him* while the cars stopped; Van Arman and Clark stood near, &c."

Mr. Van Arman testifies thus: "On the day Mr. Phelps returned from Niles, I came and got on the cars at Marshall; found Phelps; Clark was with me; we all came together to Jackson; as soon as the cars stopped at Jackson, I saw a stranger approach the cars; I have since learned that it was Mr. Ami Filley; Phelps told me so then. He met Phelps near the car, and talked; I stood near where they were; heard Filley ask Phelps how he got along out there. Phelps' reply was low, and I did not hear it except the last of it, which was that it was a failure, and he didn't make more than nine times. There was other low talk, when P. spoke of leaving the cars, and Filley said P. had better go right down to the Centre, as the boys were there waiting for him. Phelps did not get on the cars again. Mr. Filley got on and rode to the Centre."

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And Darius Clark, in speaking of the meeting at Jackson, after the firing of the Niles depot, testifies as follows: "I knew Ami Filley, at that time, and saw him and Phelps talking near the cars, after they stopped at Jackson; Van Arman was present; I came to Detroit: Filley went as far as the Centre; I saw several people there; Phelps stopped at Jackson; Filley's manner towards Phelps, when he met him at the cars, was cordial."

And yet these are the facts which are distorted into contradictions on the part of the witnesses detailing them. This is another instance of the perversion of the evidence *as it is*. There is in truth no contradiction whatever. Each detailed what he saw or heard. Filley would naturally speak fully and confidentially with Phelps; Van Arman, who was nearer than Clark, heard a few of the under sentences. Clark and Spaulding confirm the interview, the anxious waiting of Filley, and his cordial meeting with Phelps.

I will not say a word in reference to the attempt to throw suspicion, doubt or prejudice, over either of these witnesses. Attacks on them fall harmless, or recoil on the head of the aggressor. The poisoned arrows have failed to reach their intended victims. They stand observed, approved, and believed. If they have used extraordinary exertions and departed from mere ordinary rules, to ferret out this most extraordinary plot; if believing that there existed this fearful conspiracy which had violated the laws, disgraced the integrity of our State, rendered its highways mere avenues to death, and property mere objects for incendiary sport, and which yet bid defiance in its banded strength to detection and punishment; if these witnesses, believing all this, and that they had at last discovered the clue which would lead to its exposure, and yet were acutely vigilant, anxious and careful, before they struck the blow, to avoid rashness which might defeat justice or injure innocence; if it was thus they did, I submit they deserve well of their country; that every good citizen will yield them unceasing thanks; and that a refusal or a failure, to testify to what they alone could prove, would have been a weakness if not a crime.

And now, gentlemen, I must call your attention to another point which I promised to examine before you. It is briefly detailed by the witnesses who testify as to it; but I fear you cannot avoid finding in it, deep evidence of guilt. True, it only refers, in one portion of it, to a defendant who is no longer living; but *that* defendant was claimed by the prosecution as the "head and front of this offending;" and it was frequently averred by the defense, that he of all the others was the most unlikely to have had connection with or knowlgdge of Gay, or with these most heinous crimes.

I refer to the scene on the cars, the morning after the arrest of these prisoners, and I give you the language of the witnesses. Mr. Clark says: "I was present at the arrest of the defendants, and came in on the cars with them; saw Fitch. Warner asked who this Mr. Phelps was who made the complaint; said he did not know him; Fitch replied he did not know him neither. I saw Van Arman sitting with Fitch part of the time coming in."

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Dr. James A. Hahn testifies: "I reside at Marshall; I was on the cars the morning of the arrest of some of the defendants; came down as far as Chelsea; saw Fitch, Tyrrell, Filley and Freeland aboard; heard a conversation between you [Van Arman] and Fitch; he asked you to see the warrant upon which he was arrested; you showed it to him, and he remarked, that he had a slight acquaintance with this Henry Phelps, some years ago, before he went to the State Prison; since then he had known but little about him. I think the conversation was voluntary on his part; did not hear you attempt to draw him out on any thing about the arrest. He said it appeared by the warrant, that he was implicated with a certain Mr. Gay, for burning the depot; said he never knew Gay, and never heard of him. He then paused a few moments, and again turned to you [Van Arman] and said, *I believe that old Gay has turned State's evidence;* I had not before heard of Gay, and did not know who it was; during that morning Freeland, G. Filley, and one other of defendants were sitting together in the cars talking; I heard them say that if they could get hold of that d——d Hank Phelps, they would make mince meat of him; that he had been with them all winter pretending to be a friend, and had now exposed the whole matter; I was sitting near them and overheard the whole talk; I pretended to be asleep during the time."

This evidence would seem not to need comment, but to speak for itself in a tone and with an import easily to be understood.

How is it replied to by the counsel, who surely must feel its importance? Observe how they would fain avoid matter of such serious moment. They say Clark must have been mistaken in his version of the words used by Fitch. But what a reason to advance to a jury! What right have you, in the face of evidence from a truthful witness, positive and distinct as it is, to presume any mistake or error? We must take it as true, because it is not disproved.

But observe again, the attempt to get rid of Dr. Hahn's testimony. The learned counsel last addressing you says, it amounts to nothing; if anything, Fitch's denial of knowledge of Gay is a contradiction of Phelps, as no one but Phelps testified to such knowledge; that the words about "old Gay turning State's evidence," were *suggested by his perusal of the warrant.* I give you as near as I can the words of the counsel on this point: "The counsel for the prosecution criticise the use of the word "old," which, they say, is inconsistent with Fitch's denial; but Fitch spoke of his knowledge of affairs before the arrest. After the arrest, "old Gay's" name must soon become familiar and common."

I confess, gentlemen, I do not perceive the force of this remark. Is this all the answer counsel could make? If so, it has not even the usual merit of sophistry.

Phelps had testified to admissions of Fitch that he knew Gay; Fitch is found denying it at one moment, but immediately after speaking of him familiarly as "*old Gay.*" How did he know he was *old Gay?* How could the warrant suggest *that* to him? But above all, how comes he to have said, "I believe that old Gay has turned

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State's evidence? We all know the meaning of the term *State's evidence:* that it is used to denote an accomplice in guilt, who induced by compunction or hope of favor turns and testifies against his confederates. What does it, thus used by Fitch, mean, or intend, save an expression of belief that Gay, cognizant of their mutual guilt, had divulged his knowledge to the Government? It is idle to say that the warrant could ever have suggested to an innocent mind the idea that a stranger to him and his doings had turned State's evidence. You have seen the warrant; it simply recites the fact, and afforded the information, that the prisoners were arrested on the complaint of Henry Phelps, charging Geo. W. Gay with the arson of the Depot, and the rest of defendants in legal language as accessories before that fact.

Again, I might remark that there is no evidence, that either prisoners or officers in the car, at that time knew of the arrest of Gay. He was arrested in Detroit after the officers had gone to Leoni for these defendants, and simultaneously with them.

The truth of the narrative of Dr. Hahn is not denied. And what is the effect on a candid mind of this testimony of Clark and Hahn? In the presence and hearing of the former, Fitch says he did *not know* Phelps; before the latter, that he knew Phelps *slightly* before he went to State's Prison—since then, he knew but little about him."

And yet, Sheeley saw him cordially shaking hands with Phelps in Detroit. Doane saw him waiting for his friend from the country.

Clark testifies thus: "I was at Lansing last winter, as member of the Legislature; saw Abel F. Fitch there two or three weeks; saw Henry Phelps there about two days, while Fitch was there; P. was there twice; saw Phelps and Fitch together in the bar of the house; the next morning after P. arrived, they were sitting together talking over an hour, and once, for 15 or 20 minutes."

And Charles White says: "I remember Fitch's being in this city last winter, in February; saw Phelps here at the same time; remember the morning Phelps left on the cars, west; I saw him and Fitch together at the depot before he left, in conversation, until the cars started; saw them two or three times together that morning talking privately. Think Fitch took Phelps by the hand as they parted. Saw them together again, 18th of February, on the cars west of Dexter, going west; they talked together in a private manner, until Phelps got off at Francisco's; think the car might have been half full. Don't remember of seeing them together on any other occasion."

Gentlemen, did Fitch not know Phelps at all, or but slightly? I have been thus full in my detail of the evidence on this point, as I think it will satisfactorily answer several queries which naturally occur to our minds.

What was the bond of union between Henry Phelps and Abel F. Fitch, who claimed to have been so much his superior in wealth, rank and condition? Why these long interviews, these private talks, the anxiously expected meetings, and cordial greetings? Why, in

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the hour of arrest, should Fitch thus deny knowledge of Phelps, whom it is so certain he knew, and knew well? Why any falsehood at all on the subject? The theory of this case, put by the prosecution and followed up by the testimony, *alone* reconciles all these things.

Gentlemen, you must remark how naturally the words fell from the lips of Fitch, concerning old Gay, as described by Dr. Hahn. He asked to see the warrant, and it was handed to him; he saw "*he was implicated with a certain Mr. Gay, for burning the Depot.*" His first impulse was to deny that he knew him, and *he did* deny it. He paused; his head dropped; peril, danger, gloom, swept across him: his strong nerves for a moment shook, and his heart quivered; and forgetful of all present, mindful only of the tempest which had burst upon him, agony wrung from his lips, "*I believe old Gay has turned State's evidence;*" my accomplice in guilt, to save himself, has betrayed our secrets, and the avenger is upon us.

You will not forget, gentlemen, that Dr. Hahn testifies also, that as Freeland, G. Filley, and another defendant were seated together, one of them, with a bitter threat against Phelps, declared that he, after spending the winter with them as a friend, "had now *exposed the whole matter.*" It is only needful to ask, *what matter?* None other than that testified by him, is pretended to have existed between them.

You cannot fail to see, how consistent, natural and perfect, all these declarations are, with each other; with the testimony of Phelps; and with the guilt of the defendants. You cannot fail to perceive that they are inconsistent with any other hypothesis.

Gentlemen, the evidence of such declarations, from the lips of the defendants themselves, made so naturally yet so unexpectedly, placed before you by witnesses whose truth is not even questioned, must impress you deeply with the truth, that the guilty often furnish the most cogent arguments for their own conviction. In the language of an elementary and philosophical writer: "Fortunntely for the interests of society, crimes, especially those of great enormity and violence, can rarely be committed without affording vestiges by which the offender may be traced and ascertained." These vestiges sometimes come from the wrung spirit in the hour of fright or despair.

I have now, gentlemen, passed over the entire of this cause. I trust I have done so with fairness and candor. I have presented to you the case of the prosecution, and the case of the defense. Here, gentlemen, I will ask you to pause for a moment, and review with a rapid, but not careless glance, the entire testimony and cause which await your consideration and decision.

The prosecution has proved—

1. By several witnesses, whose truth is unquestioned, that a fearful combination existed between these defendants, the object of which was to injure the Railroad Company, destroy its property and burn its depots; and that in pursuance of it, many destructive and terrible outrages were committed.

2. By Wescott, whose truthfulness has been made manifest, that

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the burning of the Detroit Depot, was embraced in the design of the conspiracy.

3. By experts and others acquainted with the building, its machinery, and the precautions taken, that the fire was not the result of accident.

4. By Phelps and Lake, that several of these defendants admitted that the depot was burned by Gay, and that they hired and procured him to commit the arson.

5. By a number of witnesses whose truth is not questioned, we have proven acts done, and declarations made, by these defendants, which powerfully corroborate the testimony of Phelps, Lake and Wescott, are entirely inconsistent with the innocence of defendants, and utterly irreconcilable upon any other hypothesis than their guilt, and the truthfulness of the testimony of Phelps, Lake and Wescott.

Such is the case made by the prosecution—it has traced these defendants from their first hostile feeling, through their incipient aggressions, and onward, through darkening and increasing crime, down to the perpetration of the final act, for which they are now arraigned. A case more conclusive, more perfect in its details, or more firmly knit, by corroborations of evidence and facts than that, proven against these defendants, cannot well be conceived. And how has this case been answered by the defence?

1. It was *claimed* that no conspiracy existed; but not a witness was called to sustain the proposition.

2. It was *claimed* that the instrument with which, it was alleged Gay committed the arson, was incompetent to effect that purpose; but a few hurried experiments demonstrated that for such purpose, it was so perfect and well designed, that science and skill could suggest no improvement.

3. It was *claimed* that Phelps and Lake were the manufacturers of the match; but we heard not a particle of testimony that could lead the mind towards such a conclusion; but, much that forced the conviction that they were entirely ignorant of its nature and construction.

4. It was *claimed* that Phelps and Lake carried the Niles match to the centre; but a view of the localities mentioned, the demeanor of the witnesses and a scrutiny of their testimony, revealing its improbabilities, inconsistences and contradictions, force the mind to the painful conclusion, that they swore falsely.

5. It was *claimed*, that Wescott was impeached by contradictions; but the alleged contradictions faded before the light of the testimony.

6. It was *claimed* that Phelps was impeached by evidence of general character; but you have seen that the impeachment was little better than a farce.

7. It was *claimed*, that he was impeached by contradictions; but a fair examination of the evidence showed that on every material point the contradiction was visionary.

8. It was *claimed* that he entertained malice against Phelps; but of the only two witnesses, called to prove a word or act, to indicate it, during the two years and a half he lived in his neighborhood; one

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fled the state without waiting for cross examination, the other came before you, and confessed that his charges against Phelps were false and that he was suborned to make them, by a friend of the defendants. Such gentlemen, is the case of the people, and such is the case of the defendants.

I have given but a hurried outline, I have not stopped to recapetulate at length the points made or disposed of; under other circumstances, and before a different jury this might be requisite, but I am mindful of the close attention, you have given to the evidence, and the arguments; that you have in your hands printed copies of the testimony, and that you are familiar as the counsel engaged with the points, positions, progress, and facts of this case. I felt assured, as I travelled over it with you, that the same train of reasoning, and thought which forced my mind to conviction, must impress itself in yours. I felt it was not probable, scarcely possible, that you could avoid the conclusion beyond every reasonable doubt, that there existed at Leoni, a band of conspirators, whose minds were united in wreaking vengeance, and devising schemes of wickedness of every kind, and hue against the Michigan Central Railroad Company, and whose hands were employed by day and by night, in maturing that vengeance, and carrying those schemes into overt acts of the nature and extent of those in proof before you. You surely must be satisfied, that the Depot was burned by Gay, as charged in the Indictment; that burning depots was within the scope of combination of defendants; that these defendants had the disposition to have procured or incited the commission of this arson; that they were cognizant of it; and some of them accessory to the commission of the felony before the fact. But who of them are so identified and connected with the distinct felony here charged, as to justify us in requiring a verdict at your hands against them. I will endeavor *here* gentlemen to be careful, certain, and impartial. These defendants are strangers to me. I only know them as defendants in this cause, and through and by the testimony in it. I have neither motive or disposition to deal harshly with one, at the expense of another.

I know it is necessary to place before you the connecting link; that you must see and believe that not only were these defendants members of the conspiracy evidenced by the witnesses; not only that they were engaged in the depredations and unlawful acts in proof, but that they also advised, hired, incited, commanded or procured the principal felon to do and commit the felony charged in the indictment.

And in looking over the list of defendants, and the testimony against each of them, I find it to be the truth, and hence I candidly state it, that in reference to some of these prisoners, against whom there is a long and dark catalogue of crimes, who are deeply and intimately connected with the conspiracy against the road, and with the overt acts which were perpetrated for its ruin; there is yet wanting the single connecting link with the overt act presented in this indictment. That as to several others, a conviction might be legitimately asked for, but still, not with that certainty which would entirely satisfy the mind.

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And again, that as to others, whose age, or other circumstances, are calculated to excite compassion, we dare not indulge it to any practical extent, in our official capocities, so fatally "has the web been woven around them.

I propose, gentlemen, to deal frankly by you, and present you first the names of those for whom, under the law and the evidence there can be no escape, save at the sacrifice of justice. Secondly, of those whom you may or may not find guilty, as you are impressed with the facts; and as to the rest, I freely concede they are entitled to your verdict.

This I do subject to your own revision, and to the exercise of your own better judgment.

I submit then, that the following twelve are marked, fixed and concluded—Ammi Filley, Lyman Champlin, Willard W. Champlin, Erastus Champlin, Eben Price, Richard Price, Orlando D. Williams, William Corwin, Ebenezer Farnham, Andrew J. Freeland, Erastus Smith, and Aaron Mount.

I hold in my hand a careful and truthful abstract of the evidence bearing against each of them, which I will hastily run over, as it will serve to freshen yonr memories, and show briefly, but distinctly, the facts which exist in the testimony against these unfortunate men, respectively.

(Mr. Van Dyke here read a compilation from the evidence adduced, of the character above proposed, and then proceeded:)

You will thus see, Gentlemen, that these twelve, are clearly criminal; that they belonged to the combination; that they were animated by dire vengeance against the Company; that they aided and assisted in many of the outrages against its rights, properties and interests; that the proofs of their guilt, are thick and fast stamped upon almost every page of the book of our evidence, and detailed by almost every one of our witnesses, who testified on this branch of the case. And you observe too, that in each and every one of their cases, it is by direct proof shown you, that they *knew of the arson of the depot*, justified the deed, *admitted they had contributed to have it done*, and thus, within every principle, legal and moral, are shown to be accessories before the fact to that Felony.

As to Minor T. Laycock, John Ackerson and Daniel Myers, I have already, in the course of my argument, and in the process of passing over the abstract just read in your hearing, given you the evidence against them, pointed out its pertinency and strength, and the little which is required, if anything, to amount to legal certainty, and to come up to the requirements of the legal rule here applicable. I submit them to you with the remark, that as to this particular offence, their cuuse is not so free from doubt, as that of the first named twelve, but that *it is* of that character which requires careful investigation before a decision either way. As to the remainder, I am glad you can conscientiously say, "Go and sin no more." Would to Heaven we dare say it to all, but the violated laws of the land, call on you for vindication, and Justice demands that the guilty be punished.

And now Gentlemen, I will not longer dwell upon the facts of this

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case. Aware of the long delays, and the unfortunate vicissitudes which have so marked it: aware of your intelligence, your calm yet fixed determination to do right, and of your familiarity with every fact and theory in it, I will leave it with you, without the many other suggestions, views, and arguments which have occurred to me.

If what has already transpired to convince you, I am free to think and say, nothing I could add further, would be likely to produce such effect. The law applicable to the case, gentlemen, you will receive from the able, learned and impartial judge, who, amid all the trying incidents of this case, has exhibited so much kindness, care, and patience. May I not for you and for all, tender to him, our most grateful acknowledgements.

My theme, then, is at an end. Most gladly do I divest myself of the responsibilities and burdens of this most weighty, and important trial. And oh! how cheerfully do I transfer them to a jury who of all others I have ever seen empannelled, will be most likely to dispose of them with equal and exact justice.

I have tried to do my duty, I cannot hope to have accomplished it with eloquence, power ingenuity, or distinguished ability. I have had no months or days to prepare a reply, or to write an essay; and if my humble remarks ever find their way to the world, they must go forth with but little preparation.

But if I succeeded in going over the case carefully, fairly, truthfully and with fidelity to you, to this court, and to my country; if I have aided you in wading through this mass of evidence, to perceive the truth as it is; if I have succeeded in unrobing sophistry of its artful guise; in rectifying mistakes which would lead to error; in disarming elaborate preparation of its most ingenious but most unsubstantial theories; if I have assisted yonr minds ts a clear, fair, and logical preseption of the right, and towards a just and proper conclusion, then I am happy indeed, and far more than rewarded for my labor.

Gentlemen; I feel the solemnity and importance of the place, and the hour. The long months which we have been in this Court House, are dwindled down to a span. A narrow space intervenes between us and the long looked for end. I nced not say how important it is for these prisoners:—Solitute or society, liberty or bondage tremble within the fleeting moments; and it makes me sad, to feel and believe, as I do, that the dark shadows of the prison house, are already gathering around them.

But gentlemen, there is an importance beyond the fate of these prisoners, and the limits of this court room. This cause has spread through the confines of our State and beyond its limits, and a world is looking on to see if there is here strength, and virtue sufficient to assert the integrity of the law.

The dignity, the honor, and the character Michigan are in your keeping. I feel proud and secure in knowing them there. I feel assured that when the future historian makes out the record of our past, and the pencil of truth writes down the dark details of lawless violence, and banded crime which stain our annals, and blacken our fame, there shall be written beneath it in living light, these words,

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which will illumine the darkness and remove the stigma: "a firm and able judge: an intelligent and honest jury, unawed by fear and prejudice, and unawed by threats, vindicated the violated law."

We are called upon by every high consideration which can induce action, to do our duty in this case. Gratitude for the lovely heritage God has given us; Patriotism, love for the beautiful peninsula, in which is fixed our destiny, and centred our all of earthly good and hope; the desire we have for her future prosperity and illustrious career, all unite in one voice, and ask that you be firm, free, and steadfast on this occasion. For if these dangerous doctrines which produce the outrages we are considering, are to be spread from the hamlets of Leoni, throughout the breadth of the land, and even to the jury box of our courts; if men animated by deep hate against a corporation, feel and think that they are justified in redressing their own real, or fancied wrongs, in their own way; if courts are to be scouted at, law trampled on, order rushed into wild confusion, and crime sympathized with, and left to stalk unpunished; then indeed have evil days come upon us. Capital, virtue, peace, and property will be trodden over, and crushed by mob violence, and all the dire evils which will follow in its train.

The first Jury which renders a verdict, tainted by the unhallowed spirit of fear, or public opinion, or prejudiced by loud clamors against monopolies and tyrannical corporations, will have stricken a death blow at his country's honor and welfare. The first Juryman who renders his verdict, in the midst of turmoil, excitement, and prejudice, unmoved by all such elements, with his conscienc impressed by his oath; with his mind calmly but deeply imbued with the truth, and regulated by the law, presents a moral spectacle, to be admired, honored and forever remembered; his action adds to the security of the commonwealth, and gives new guaranty of its perpetration.

Gentlemen: I do not intimate that there is any great volume of prejudice or passion arrayed against the Michigan Central Railroad Company. I believe that the mass of our citizens regard it as a public benefit; a mighty source of unnumbered blessings to Michigan, and its superintendants, and managers, as liberal, just and honest. Be this as it may, I do know, that Michigan is loyal to the Union and the laws. May she remain so forever! I would fain carve the sentiment on the columns of her Capitol. I would stamp it on her broad banner. I would wave it aloft, that her law-loving and law-abiding people might gaze on it with pride and pleasure—knowing and feeling that they and all they have or cherish will ever find security, peace, and happiness, beneath its ample folds.

So may it be, and if so, we will soon find the State of our pride leaping on to greatness like a young giant, glowing all over with honor, vigor, and prosperity, till she becomes lustrious as the starlit sky.

But, gentlemen, fraught with importance as I deem this case to be, to the character and welfare of Michigan, still we wish no verdict at the unjust condemnation of a single citizen. Whatever your verdict may be, this prosecution, and a good community, will, and must

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be satisfied with it. All we required was a fair, impartial, trial; that has been obtained, and, whatever be the result, we will never murmur against it. We know the care and anxiety it has cost you, and the inconvenience and loss it has entailed upon you. We know the consciousness you have of your weighty responsibility, and that even now you would gladly pass the cup from you. But, gentlemen, the DUTY of a good citizen, if well discharged, however painful in the present, becomes, through all after time, an abiding source of pure pleasure.

May I, for a moment, change this scene; take you to the Capitol of your Union, and turn back the tide of time, a few short months. See, there, before you, the scene of a Patriot Soldier's death bed! His life has been spent in the service of his country. His honer, like his own good sword, is without a stain. He once was exposed to the perils of this north-western frontier. He braved danger and death amid the everglades of Florida. On the terrible fields of Mexico, he bore aloft the glorious flag of our Union, graced it with new triumph and "Planted fresh stars of glory there!" The voice of a grateful nation called him to the high place of our country. But, here for him is the end of life. He has fought his last battle; he yields to the victor—Death; his eye, once gleaming through the smoke of battles, is dim; his voice, once heard like the bugle, over the clash and shouts of a deadly strife, can only whisper; and his brave heart, which never beat with fear, is flickering in its last pulsations. What do we hear now? What memories of brave deeds now come back to light up the gloom of the dark hour? What rays of earthly glory now shed their radience to cheer the dying Hero, through his last struggle? Alas! illustrious though his deeds; bright though his fame; all, all seem quite forgotten, but there does come whispering to his sinking spirit, a kindly thought, and a sweet solace, and you hear it falling tremulous from his lips: "I have endeavored to do my duty."

Gentlemen, may we endeavour to do our duty in this case, and through life, and be consoled by the reflection thereof in Death.

And now, though through with all I have to say; though happy to feel that I need no longer detain you, I yet linger ere taking my seat.

We have come together so often; we have associated in this cause so long; we have participated in our several capacitees for so many months, in all the excitements and incidents of this trial; the kindly greetings of recurring morns; the familiar faces, the pleasant intercourse, all have flung remembrances over the past, which now at the moment of parting, cluster so fresh and warm around us, that I hesitate to end them

I would fain say a word of kindness to all engaged in this cause, but it may not be appropriate to speak individually of each. I feel I may, however, with propriety allude to the Prosecuting Attorney of this County, who before you and the people he represents, has discharged his trying duties with an impartiality, ability, and fidelity, which has gained for him an enviable name.

And now for yourselves allow me to say, I cannot by words, show

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my high appreciation of you and your services. I can only thank you warmly and truly. May long life and every prosperity repay you for your cares and sacrifices in this cause, and when the summons comes for you to appear before the high Tribunal of another world, may each one of you with a conscious sense of duty well discharged,

——"Sustained and soothed
By an unfaltering trust, approach thy grave
Like one who wraps the drapery of his couch
About him, and lies down to pleasant dreams".

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JUDGE WING'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY:

After many months of patient and laborious investigation of the facts of this case, you are about to retire to your room to consult fo your verdict and decide upon the guilt or innocence of the prisoners whom you have in charge. Your earnest attention to all that has been submitted to your consideration affords strong evidence that you are aware of the responsibility resting upon you.

To one not acquainted with the history of this case as it has dragged its slow length along in this Court, it would seem quite unaccountable that it should have consumed so much time. The enquiry has often been made, when will this trial be brought to a close? The cause of this delay is not well understood except by those who have participated in the scenes passing before us and have been familiar with the whole course of proceeding. I have therefore thought it would not be improper for me to give a short statement of the proceedings, that they may be more generally understood by those who take an interest in the public administration of justice.

This indictment and three others against these defendants, were, by the election of the defendants, removed to this Court from the County Court in the early part of May last. On the fourteenth day of May, this cause was called on for trial—when Abel F. Fitch, Benjamin F. Burnet, Orlando D. Williams, Napoleon B. Lemn, and Arba N. Moulton, severally filed their written request that they might have separate trials, and all the other defendants who had been arrested and had plead to the indictment, appeared in open court, and by their counsel elected to be tried together, and announced themselves ready for trial. On the same day a motion was made by a portion of the defendants to change the venue to a neighboring county. This motion was overruled for the reason that the law requires that when an order directing the removal of a cause shall be entered, the Clerk of the Court shall immediately transmit the indictment and all the papers in the cause to the Clerk of the Court to which the cause shall be removed; and if the order was made, the cause as to the defendants in whose behalf it should be made would be no longer under the control of this Court, and the remaining defendants could never be tried, as there was no provision made for the return of the indictment to this Court. It was therefore held, that unless all of the defendants joined in the application the motion could not be granted.

On the same day a motion was made in behalf of Fitch, Filley and Burnett, for a continuance of the cause as to them, to the next term of this Court. This motion was predicated upon affidavits stating the absence of three witnesses. Counter affidavits were presented, showing where the absent witnesses were. Upon this showing, the motion was denied; but a continuance was granted to the twenty-eighth day of May, to afford defendants time to obtain the attendance of such absent witnesses or their depositions.

On the same day, the counsel for the defendants—Henry Frink, William A. Howard, L. H. Hewett, ahd Nehemiah H. Joy, moved a further delay to enable them to procure the attendance of assistant counsel from New York. This motion was overruled, on the ground that sufficient time had elapsed for the procurement of additional counsel from abroad, if needed. It was however, arranged between the Prosecuting Attorney and the counsel for the defence, that the defendants should withdraw their request for separate trials, that they would proceed to trial jointly, empannel a jury and swear two or three witnesses to some specific point, and allow the cause to be adjourned over to the fifth day of June, that defendants might procure additional counsel. Pursuant to this stipulation a jury was empanneled, three witnesses were sworn, and then the cause was adjourned to the fifteenth day of June. On that day, the Prosecuting Attorney, and the defendants with their counsel, were present, and Fitch and Filley were admitted to bail. They were also admitted to bail on

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the other indictments pending in this Court, and a few days afterwards Burnett was bailed.

At a subsequent stage of the trial, on the 9th day of June, a motion was made to quash a capias sued out of this Court against the defendants in a civil suit for damages by the Michigan Central Railroad Company, on which an order for bail had been endorsed by a Circuit Court Commissioner of this County; The motion was overruled, and that case was not again in any manner brought to the notice of this Court either upon a motion for bail or otherwise.

On a subsequent day in June, an application was made to this Court to direct the amount in which the other defendants might give bail which was done, accompanied by a statement that if, when the defendants might be ready to give bail, the amount should be found to be beyond their ability to procure, it would be lessened.

Sixty-seven days have been employed in the examination of witnesses. The prosecution have examined 246 witnesses, and the defendants have examined 249 witnesses—in all, 495 witnesses. And my minutes of all the evidence covers five hundred and ten closely written pages of foolscap paper.

In the early part of this trial it frequently occurred that some of the prisoners were prevented from attending Court by sickness; on such occasions both parties deemed it proper to file written stipulations for the continuance of the trial during the absence of the sick prisoners. Towards the close of the period devoted to the examination of witnesses, and during the illness of Laycock, which continued from the twenty-third day of July to the fourth day of August, no stipulation was filed by defendants, and the Court was adjourned from time to time until his recovery. On the 18th day of August, A. F. Fitch and William Gunn were confined to their rooms by sickness, and the counsel for the prisoners not being willing to proceed with the trial in their absence, declined to stipulate as they before had done, and the Court was adjourned to the 26th day of August. Before this period elapsed, these defendants died. The trial was again commenced on the 28th day of August, and continued without further intermission till the first day of September, when the evidence was closed. From that period to this the counsel have been engaged in pleading before you. They have severally performed their tasks thoroughly and with great ability.

I have thus stated a few facts which will account for the delay which has occurred, disposing in getting on with this case as rapidly as could have been desired by all of us. That so much has been accomplished and so little remains to be done, I doubt not is the occasion of joy to all who have been engaged in this cause. When we look back upon the time consumed, the important interests at stake, and dependant upon the continuance of your lives, when we consider that we have passed through the sickly season of the year, and that we are all now in comparative health, and only two of all those who were connected with the trial at its commencement have been removed by death, we have great reason to be thankful, and not the less so, that our labors are approaching a termination.

You will remember that the indictment on which this prosecution is based, contains four counts, the last of which, (charging defendants as accessories after the fact) has been abandoned.

The first count charges that the defendants (including George Washington Gay) on the 18th day of November, 1850, at the hour of eleven, in the night time of that day, at the city of Detroit, &c., did burn a certain railroad depot there situate, &c., the property of and then and there occupied, used and possessed by the Michigan Central Railroad Company, a body corporate, &c., to the great damage, &c.

The second count charges the same offence, at the same time and place, against George Washington Gay alone, with the usual conclusion.

The third count charges that the said defendants (naming them all but Gay) before the said wilful and malicious burning of said railroad depot was committed in form last aforesaid, to wit: on the 18th day of November, 1850, at, &c., did feloniously and maliciously counsel, hire, incite, and procure him, the said George Washington Gay, the said malicious burning aforesaid of the said railroad depot in manner and form last aforesaid, to do and commit against the form of the statute, &c., and against the peace, &c.

It is urged on the part of the defenee, that no legal conviction can follow against the defendants now on trial on the indictment as now framed.

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It is true, that formerly an accessory could not *without his own consent,* unless tried with the principal, be brought to trial until the guilt of his principal had been legally ascertained by conviction or by outlawry.—Arch. Crim'l Pl.517. But now, by our Revised Statutes, page 686, an accessory, before the fact to any felony, may be indicted "either with the principal felon, or he may be indicted and convicted of a substantive felony whether the principal felon shall or shall not be answerable to justice."

The authorities relied on by the defendants' counsel, only establish the position, that where the principal was indicted with the accessory, and the former failed to appear to take his trial, that the latter was not compelled to plead to the indictment *for the time being:* the decision goes no further.

It is to be observed, that in the present case, not only did all the defendants now on trial, plead to the indictment, but by express stipulation they have gone to trial, and the objection is now urged for the first time, when the trial is about to be closed, and after the consumption of months in the examination of witnesses. The parties have, therefore, waived any objection which it might have been competent for them to make on this head.

Again, the defendants insist that this is not an indictment for a substantive felony against accessories before the fact because the concluding clause in the second count charges G. W. Gay with having committed the crime, but it seems to me it may be considered and treated as such an indictment, notwithstanding the clause to which allusion is made. It contains all the elements of an indictment for a substantive felony, and the clause alluded to may be treated as surplusage. It cannot possibly vitiate a charge properly put upon record; any informality on this head (if this may be considered as such) is abundantly cured by our Revised Statutes, page 700; sec 34, which declares that "No indictment shall be quashed or deemed invalid, nor shall the trial, judgment or other proceeding thereon be affected by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.

In the case of Regina vs. Wallace 41, E. C. L. 113, which was decided subsequent to the cases cited by defendants' counsel, the indictment was against the principal and the accessories. It seems the principal had not been tried for the offence, and it appeared he had not been amenable to justice. Amongst other objections it was urged by the counsel for the defendants in that case that "the indictment was not properly framed as an indictment for a substantial felony within the meaning of 7 Geo. 4 Chap. 64. 8, 9, (which is in precisely the language of our Revised Statutes) but was in form an indictment at common law against the principal and the accessories before the fact, and that, as the principal felon had not been convicted, the accessories before the fact could not be tried or convicted upon it. Ch. Jus. Findall overruled the objections; the prisoners were found guilty, and all the objections were reserved for the opinion of the fifteen Judges of England. The result was that all the objections were overruled, and the conviction held right. It is worthy of remark that the count against the principal in that case contained the very clause to which exception is taken in the case before us. See 38, E. C. L. Ash vs Fay, 126, 225. Upon the authority of this case, therefore, I hold the objection to be untenable.

It is no part of my duty, as a Judge, to endeavor to convince your minds of the guilt or innocence of the prisoners. I shall have done, that which is required of me, if I give to you the law of the case, and direct your minds to such rules as will furnish accurate guides in the investigation of the facts. You have the evidence before you in the form of a book, to which you can refer at any moment. It has been rehearsed before you seven times within the last fortnight by the counsel upon both sides: they have employed great eloquence and skill in pointing out all its strength and all its weakness.

I am persuaded it could answer, no useful purpose for me to spend two more days in going over the same ground, whether by the same or other paths. No explanation that I can give would throw any further light upon the testimony. I shall therefore omit a detailed notice of it as it bears upon the charge in the indictment, and content myself with stating the theory of the charge and of the defence, and then turn to a consideration of the points of law and rules of evidence applicable to the case.

The theory of the case presented by the evidence on the part of the prose-

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cution, is, that the Michigan Central Railroad Depot in the city of Detroit was burned on the evening of the 18th of November last past, by George Washington Gay, by means of a match, that the defendants aided and assisted him before the fact, by furnishing him the match, and by paying him for doing the act. That for two years past the defendants, or some of them, have beenengaged in a conspiracy to destroy the property of the railroad, including he cars, engines, rails and depots, with the view to extort money from the Railroad Company. That pursuant to this combination or conspiracy, they have from time to time placed obstructions on the road, run the cars off the track, stoned the passenger cars, burned lumber near the track, have written threatening letters to the agents of the Company, and finally procured the depot in Detroit to be burned by Geo. W. Gay, and the Depot at Niles to be fired by Phelps and Lake, and that all these acts have been committed pursuant to a concerted plan between these defendants.

The defence has been conducted upon the theory that no combination or conspiracy ever existed between the defendants to injure or destroy the property of the rail road company. That the several acts of injury to the road, cars, engines, and track were not committed by them jointly, or severally, and if they were committed by them severally there was no concert between them, and therefore whatever either of them may have done cannot furnish evidence against the others in this case. That the depot was not fired by them or by their procurement but took fire either by accident or was fired by some of the witnesses for the prosecution. That the various acts of aggression proved to have been committed upon the road, cars, and engines, were not committed by defendants, and that the evidence of all the witnesses, implicating them in the commission of those acts, is untrue. That the evidence of Phelps, Lake, Wescott and others in reference to the confessions of Gay and of the several defendants is untrue. That instead of a conspiracy having existed between defendants—Phelps, Lake, and Wescott and others have conspired against them, burned the depot, committed the injuries to the cars, track, and engines, and fired the depot at Niles and have charged it upon the defendants for the purpose of securing to themselves such reward as might be offered for the detection andapprehension of the offenders. That Phelps and Lake having been convicts in the State Prison are unworthy of credit. That all of the witnesses for the prosecution have been discredited either by their own evidence, or by the testimony of the witnesses for the defence. That Phelps has been impeached. That the supposed confessions of Gay are not admissible in this case to prove his guilt, but it must be proved *aliunde* and that the supposed confessions of either of the defendants on trial, cannot be given in evidence against any person but the one who made them, as they purport to have been made long after the acts to which they relate were committed and therefore do not form a part of the *res geste.*

At an early stage of the trial, the question arose whether any proof should be received, which did not point directly to the burning of depot.

The court permitted testimony to be adduced before you showing various acts of aggression against the property of the railroad company, said to have been committed by the defendants or some one or more of them, as well before the commission of the crime here alleged, as afterwards. Such acts, if committed, tend to prove a conspiracy to commit the offence charged in the indictment, as well as the origin of the plot. They tend to show a morbid and hostile feeling if any existed on the part of the prisoners, also to prove the identity of the accused and their connection with the crime charged. Also to show the character and entire history of these transactions, and to corroborate and fortify the evidence adduced in the cause I0 Pick. 510.

If the charge of conspiracy said to be involved in the commission of this crime is proved against the prisoners, then it is weighed as evidence in this case, which tends to establish the guilt of the prisoners. It is a question of evidence for the consideration of the jury.

It makes no difference that we call it a Conspiracy; any agreement between several persons to do an unlawful act is a Conspiracy; and the law applicable to conspiracies is applicable to such agreement. The evidence was not received for the purpose of showing separate and distinct offences, either by the defendants jointly or severally, and with or without concert, evincing such a degree of moral turpitude, as rendered the defendants capable of committing

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the crime here charged, and from which you should be at liberty to draw the inference that they did commit it; for such purpose, the evidence would have been clearly inadmissible on the ground of irrelevancy to the issue. It was admitted to show a general combination between the defendants, having in view the ultimate, though contingent, burning of the Depot at Detroit; to show that as defendants were still working out their original plan, they had not abandoned it up to the period when the depot was burned, and thus show—or raise a presumption—that their scheme was in full force when the depot was burned.

The most important scene in this great drama is yet to be enacted, and you are to be the actors. I am confident you will not shrink from your duty, but that you will faithfully and conscientiously perform your part. Your intelligence will enable you to arrive at such result as the facts and the law of the case will authorize, and as will be satisfactory to your own minds. In your deliberations you cannot too highly estimate the importance of keeping within the line of your duty—of divesting your minds of all undue prejudices, and of all considerations which do not properly and fairly spring from the proof as it has been submitted to you in open court. In the ordinary walks of life, your minds and your hearts are often excited by whatever agitates and quickens the public pulse, and you yield to those influences which surround you in the domestic circle, in society, and in the public streets, without stopping to trace them to their true source. It should be otherwise with you *as jurymen*—you should be governed solely by the law and the testimony. Never before in this State has a jury been empanneled, from which would be expected a more careful observance of all the rules that should govern them, than in this case. You have had abundant time, as well as means, for the examination of the evidence, and for reflection, and it is my most earnest hope that you may be able to agree upon a verdict.

In reviewing the evidence, you will have to discriminate closely, to enable you to separate from the great mass of it, that portion upon which you can rely, and to discard that part which seems to be unworthy of credit. Until you have done this, you cannot hope to reconcile any conflict which may be found to exist in the testimony of witnesses who have exhibited a desire to speak the truth, but who, from the infirmities of their natures, have been unable to understand or relate what they have heard and seen, precisely alike.

It should be your first duty to see that you understand the facts alike; you will thus lay the proper basis for deliberation. Should it appear probable that you may differ in your views of the material facts of the case, then will arise a necessity for the exercise of the greatest degree of caution. You should avoid (as far as possible) forming or expressing a decided opinion upon the merits of the case, until you are satisfied that you understand the case in all its bearings, and have received all the light that your mutual suggestions can impart to it. Adherence to first impressions ought not to be carried too far.—No juryman can be morally certain that he is right, and he is much less likely to be right when heated by argument, than when his pride of opinion is kept under subjection to his judgment. Hence the necessity for great forbearance towards each other. Without great care, your adherence to opinions hastily expressed, may be the result of stubbornness, prompted by pride of opinion, after you are, or should be reasonably convinced that you are wrong.

It will be your duty to agree upon a verdict if possible, as the consequences of a disagreement would be very disastrous to both parties; but if, after a careful review of the evidence, and a clear comprehension of the facts and the law of the case, any one of you should feel compelled to differ from your fellows, let him be *sure* that his views of the case result from the exercise of the best judgment he can bring to bear upon it; being thus satisfied, it will be his duty to abide by his opinions, for each party is entitled to the deliberate and carefully formed opinions of every juryman.

It is a cardinal principle, which you are to bear in mind, that you are to hold the defendants as innocent until they are proved to be guilty; this legal presumption of innocence is to be regarded by you as a matter of evidence, to the benefit of which the defendants are entitled.

Where a criminal charge is to be proved by circumstantial evidence, the proof ought to be not only consistent with the prisoners' guilt, but inconsistent with any other rational conclusion to be drawn from the proof. On the

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other hand, as men seldom do unlawful acts with innocent intentions, the law presumes every act in itself unlawful, to have been criminally intended, till the contrary appears. This legal presumption embraces all of sympathy that you are permitted to indulge. Allow it to have its proper influence upon your deliberations. Its adoption into our code, was the result of a just appreciation of the highest standard of judgment, for it permits each of you to say to the defendants, if these witnesses do not condemn thee, neither do I. Further than this, it does not extend; it allows to you no latitude for the exercise of more mercy; it appeals to your understandings, not to your hearts; it calls into exercise the best efforts of your mind, as it demands that you should attempt to separate truth from error. It is not required that you should be morally certain that your judgment is right beyond all peradventure, for the rule is addressed to human minds liable to err, and must be applied by minds of various grades to human testimony. All that is required is, that you should have evidence satisfactory to your minds, "by which is intended that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt.—The circumstances which will amount to this degree of proof can never be previously defined, the only legal tests of which they are susceptible, is their sufficiency to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest."

It is because men do not generally violate the penal code that the law presumes every man innocent, but some men do transgress it, and therefore evidence is received to repel that presumption. The moment you are reasonably convinced the evidence in this case is sufficient to overcome this presumption, it should thereafter cease to influence your minds. You must adhere closely to the proof, and adopt such conclusions as are produced on your minds, by reasonable and fair deductions from it.

It has been often said, and it has been urged in this case, that you should give to the prisoners the benefit of any doubts you may entertain of their guilt. This is true. It is, however, proper that you should understand what is meant by such a doubt as the rule contemplates. If, (and I state it by way of illustration,) the proof shows that there were two ways by which the depot may have been fired, and that, according to the proof, both ways were adequate to that result, and you do not feel a reasonable degree of assurance that it occurred by the agency or procurement of the defendants, as opposed to the supposed action of the machinery, or a light in or near the wheat bins, your doubts would arise from the proof. But you are not to imagine a circumstance to which the proof does not point to furnish the basis of a doubt of that which is reasonably proved to be true. In short, you are not to doubt whether or not the depot may not have been fired by lightning from heaven, without proof that it lightened that night.

Of the general proposition, that "upon an indictment against an accessory, a confession by the principal is not admissible to prove the guilt of the principal, but it must be proved *aliunde*," there can be no doubt. But Mr. Russel, in his Treatise upon Crimes, in thus stating the law, adds—"especially if the principal is alive and could be called as a witness;" thereby impliedly limiting the restriction to the reception of confessions of a principal who is alive. I suppose the rule in such case to be partly founded on the same principle as that which excludes the confessions of one conspirator against another. In that case, or in case of other crimes perpetrated by several persons, when once the conspiracy or combination is established, the act or declaration of one conspirator or accomplice in the prosecution of the enterprise, is considered the act of all.

Each is deemed to assent to or commend what is done by any other in furtherance of the common object, but after the common enterprise is at an end, whether by accomplishment or abandonment is not material, no one is permitted by any subsequent act or declaration of his own, to affect the others. His confession, therefore, subsequently made, even by the plea of guilty, is not admissible in evidence, as such, against any but himself. If it were made in the presence of another and addressed to him, it might in certain circumstances be receivable on the ground of assent. In fine, the declarations of a conspirator or accomplice are receivable against his fellows, only when they are either in themselves acts, or accompany and explain acts, for which the others are res-

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ponsible, but not when they are in the nature of narrations, descriptions, or subsequent confessions. 1 Greenleaf's, (Evi. Edit 1850,) sec. 232.

It is urged by defendants' counsel that the confessions of Gay and other admissions and statements of Fitch, are embraced by the latter part of this rule of law as stated. It may be remarked, however, that the direct evidence in relation to Gay's confessions was received on the first day of the trial by the express consent of defendants'counsel, and under a stipulation that defendants' might omit the cross examination of the witnesses until such time in the course of the trial as they might choose to recall them for that purpose.— If the evidence was incompetent the defendants should have objected to its reception, and if after it was received without objection they might have moved to strike it out and under the circumstances attending its reception the court might have felt it to be their duty to entertain such a motion. but defendants' counsel instead of doing so, recalled the witnesses after some weeks had elapsed and entered into a very extended cross examination upon various points embracing this amongst others, and no question was ever made as to the legality of this evidence until after all the proof was closed and the defendants' counsel addressed you in reply to the opening speech of the prosecuting attorney, in which he commented upon it. The rule which excludes such evidence was intended (as are many rules) for the protection of defendants, but they can waive this or any such rule of law, and having done so in this case, and permitted the evidence to go to the jury, they have now but very slight grounds if any upon which they can exact its exclusion. At the same time I prefer to say to you, rather as a matter of duty, as requested, viz: that "the statements of George W. Gay, the alleged principal, are not evidence for the purpose of showing that any of the prisoners were accessory to his criminal acts or in any manner connected with him." It seemed to be the understanding of the prosecution at the time this evidence was received that it was offered and received rather to show the theory of the prosecution in this case, than as a material or substantial part of the case, and it has been so treated by the prosecution and defence during the progress of the trial and in their arguments to the jury. What I have now said applies as a matter of course to the confessions of Gay as to his own guilt. I state this however with a caution to you, that you will not lose sight of the distinction that exists between his mere statements and his acts, which are traced home to the knowledge of any of the defendants, nor are you to lose sight of any admissions which they may have made in reference to him, nor of the evidence in relation to the matches found at his house, these are legal evidence in the cause.

The evidence of the admission of Fitch stands in a position somewhat different. It was all received previous to his death, and was admissible. In,the closing speech of the counsel for the defence it is urged that "his statements and admissions are not legal evidence against the remaining defendants, and that they must be withdrawn fuom the cause." To this proposition as stated I cannot yield my assent. Whether those statements and admissions are evidence or not, depends upon the existence of the conspiracy and time when they were made. If you find that a conspiracy did exist, and those admissions and statements were made during its progress, they are evidence, but as I have stated, if they were made after the objects of the conspiracy were accomplished or abandoned, or as a narrative of past transactions, they are not evidence.

The rule of law last quoted ftom Greenleaf applied to the evidence of Smith's admission. They are not evidence to prove the guilt of Gay as principal or to charge the other defendants as accessories.

The defendants have introduced a large body of evidence tending to impeach the character of Phelps for truth and veracity. In examining this evidence, you will be careful to ascertain whether the witnesses have the requisite information, to enable them to testify unerstandingly. According to the legal rule, a witness should come from the neighborhood of the witness who is to be impeached, at least he should be acquainted with his neighbors, and know what his general reputation for truth is, in that neighcorhood, aud it may be traced back to other places where he has resided. In this case the counsel by common consent, have extended the rule to places where Phelps has been in the habit of transacting business and the same remark will apply to those places. The witnesses should testify as to their knowledge of his

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reputation for truth. The inquiry should not be as to his general character, or as to any particular traits of character, but his truthfulness. You will also ascertain whether his reputation for truth is made to depend in any degree on what is said of his evidence in this court. If you find this to be the case, so far as it extends you will reject it; for of the truth of his evidence in this case, you alone are to judge. It will not do to receive evidence in a case, and then take the opinion of any community upon it, that would be placing such community in your place, to perform your duty.

I will here advert to another portion of the evidence, introduced to support the character of Phelps for truth. It is urged that many of these witnesses say they have never heard his character for truth called in question, that therefore they cannot know anything about it, and consequently their evidence is of no account. But, if the witnesses reside in the same neighborhood and are generally acquainted with his neighbors, you are to regard their evidence in that particular, as the strongest that can be given of his truthfulness, for common experience teaches that a man's character for truth is seldom or never discussed until it is bad, or in some way questioned.

Phelps has testified that he was convicted some years since of the crime of larceny, and was sentenced to imprisonment in the State prison for the term of five years, but before the expiration of that time, he was pardoned by the Governor, upon the petition predicated upon his alleged innocence of the offence for which he was imprisoned.

Lake has testified that he was convicted of the offence of attempting to aid a prisoner in the Wayne county jail to escape, and was sentenced to imprisonment in the State prison, and remained in prison during the whole period mentioned in his sentence. No question has been made as to the competence of these two witnesses. As our Revised Statutes, page 99, provides that no person shall be excluded from giving evidence in any matter, suit, or proceedings, civil or criminal, by reason of crime, &c. These men are therefore competent witnesses, however much discredit may be attached to their evidence in consequence of their conviction and sentence. The fact that their evidence is allowed to go to the jury, necessarily involves in it a power in them to believe it—particularly if their evidence is corroborated, its credibility under the circumstances, must be judged of by you.

The verbal admissions said to have been made to these and other witnesses, ought to be received with great caution, for if it is concluded that the witnesses are actuated by an earnest desire to relate the very word which they heard from the defendants; yet it is said by legal authors that such evidence consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake, the party himself may not have expressed his own meaning, or witness may have misunderstood him or failed to give his exact words or his true meaning. But when admissions are deliberately made, and precisely identified, the evidence they afford is after of the most satisfactory nature.

It has occurred in this case, as it often does, that the witnesses do not attempt to give more than the substance of what they have heard, there is no special rule of law respecting such evidence, and I do not know that it should be imposed upon you as a duty, to be more cautious in its reception in this case than in any other. The objection which may be made to it applies to oral evidence of admissions in all cases. If there is any consideration which can give greater force to the caution in this case than in civil cases, it is, perhaps, the acknowledged policy of the law in exacting greater caution in cases affecting the life or liberty of the citizen. But whatever indulgence the humanity and tenderness of judges may have allowed in practice, in favor of life or liberty the better opinion seems to be, that the rules of evidence are the same in both civil and criminal cases. See 1 Greenleaf's Evi, sec. 65.

Woolivar, one of the witnesses for the prosecution, is proved to have acted with the defendants and participated in the commission of many injuries to the cars and to the Railroad. In what sense and how fully he was an accomplice, will be for you to determine. This is ordinarily applied to a witness who has participated in the commission of an offence for which another is indicted and is on trial, but the witness is not named in the indictment or is not put upon trial; and one of the grounds of discredit which attaches to his evidence is, that by turning State's evidence—as it is called—he testified under the in-

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fluence of a hope that he may be permitted to escape or receive but a slight punishment for his offence. This witness, though he may have done, and aided in the commission of many criminal acts against the Railroad Company, yet according to his evidence he abandoned all connection with the defendants, and the supposed conspiracy, some two months before the offence was committed with which they now stand charged.

If each of the defendants had done the same, (I speak of the theory of the matter) this charge would not have been brought against them, and consequently Wolivar could not have been an accomplice; they are not charged with a conspiracy in this case, nor with having committed any crime to which Wolivar was a party, (unless he was a party to this) and he having abandoned or stopped short of doing that which he once may have intended to do, and which if he had done it, would have made him a party to the crime charged against them, is not an accomplice within the legal meaning of the term, and the defendants were not in any sense his agents in doing that with which they are now charged. It is shown that he was quite habitually under the influence of ardent spirits, indeed this was more or less the case with all the defendants; he worked for Amni Filley by the month, and left his employment on the 7th day of September last; he seems to have been at all times quite ready to engage in any desperate enterprise having for its object an injury to the cars on the road. If he was an accomplice, and had not abandoned the plan by which it was charged, the defendants carried on their depredations up to and including the offence here charged, then it will be exclusively within your province to say what degree of credit shall be given to his evidence.

Great caution in weighing the evidence of an accompliceis dictated by prudence and reason, and it is usual so to instruct juries. There is, however, no presumption of the common law against the testimony of an accomplice, yet experience has shown that persons capable of being accomplices in crime are but little worthy of credit, and Mr. Greenleaf in his law of evidence says that it is upon this experience that the usage is founded. The admission of those who are clearly accomplices, or witnesses for the Government, is justified by the necessity of the case, it being impossible to bring the principal offenders to justice without them. It is expressly conceded, that the jury may, if they please, act upon the evidence of an accomplice without any confirmation of his statements. It is said that judges in a discussion will advise a jury not to convict of a felony upon the testimony of an accomplice alone, and without corroboration, and it is now so generally the practice to give them such advice that its omission would be regarded as an omission of duty, on the part of the judge. Greenleaf's Evi. sec's 45, 379, 380, 381. The confirmation spoken about must be derived from a witness who is not an accomplice, and it must extend as well to each of the defendants as the offence.

It is urged by defendants' counsel, that the evidence of such of the witnesses for the prosecution as swore to the admissions of the defendants, is unworthy of belief, and principally because of the means they employed to obtain those admissions. They have been denounced as *spies;* it is said they resorted to extraordinary means to obtain the confidence of the defendants, that they might betray them—and that they have done this and much more, and worse to accomplish the ruin of the defendants, simply for money, and to advance their own ends. If this be true, if these witnesses have not been actuated in all they have done in relation to this matter, by good motives, but have cast aside all moral influences, and have been governed by the hope of gain or the desire of revenge, or any of the bad passions which are supposed to impel the abandoned and profligate to action; then indeed, they are unworthy of credit. But in pushing your investigations upon this point, it may be well for you to remember, that calling either witnesses or defendants hard names, may excite unfounded prejudice, and unless they are properly applied, they are but idle breath.—Some of the counsel on both sides have carried this mode of enforcing their convictions upon your minds to a great length. Take the evidence as you have received it from the mouths of the witnesses: leave out the hard words of the counsel, and ascertain for yourselves what is the true character of the several witnesses, and what influenced their minds and hearts throughout all their connection with the subject matter of this prosecution.

It is also made an objection to the witnesses, that they were employed by the Michigan Central Railroad Company, which has been characterized as a

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mammoth monopoly—as possessing great wealth, and, consequently great power and influence. You have been strongly cautioned against its influence, and it has been more than intimated, that its power overshadowed all our monied interest—that it is likely to penetrate our halls of justice—to enter our jury boxes, and extend to the judges upon the bench—and that it has been improperly put forth in instigating and moving on this prosecution. This may be true: and it may also be true, that in the excitement of a public speech, in the presence of a large assemblage of people, an advocate may incautiously and without any design, be hurried on to such a train of remarks as will withdraw the minds of a jury from the consideration of the proof, and the only points in the case which should engage their attention, far away into the regions of fancy, and to the discussion of topics which may influence the passions, highly excite the prejudices and sympathies of a jury, and mislead their judgments. I do not say that these dangers, which may be apprehended from either of these sources, are, or have been apparent in this case; but I do say, you should with equal care, guard against the influence of both of these disturbing forces.

There is no rule of law which casts discredit upon the testimony of the witnesses for the prosecution, simply because of their connection or intercourse with he defendants, for the purpose and under the circumstances stated by them. They say they went amongst the defendants for a good purpose—a purpose which was in no wise connected with a desire to promote the alleged design of the defendants. Neither is there any rule of law which would cast discredit upon them because they were or had been in the employment of the Railroad Company, and receive stipulated monthly or daily wages. This objection would apply to the evidence of any agent.

A long series of injuries to the property of the Company, well known to the public, and of a character that endangered the lives of travelers as well as the lives of the agents employed on the cars, had imposed upon the Company the imperative duty of guarding their passengers as well as their own property from injury and menaced destruction. The law was powerless, for until it should be ascertained who were the perpetrators of these crimes and injuries, the law could not lay its strong arm upon them.

The extraordinary aid of the State authorities could not be invoked or expected, to maintain a constant guard and watch over the road by night. Such care and watchfulness as could be bestowed by the numerous agents of the company were insufficient to secure the desired object. And nothing short of extraordinary means seemed to promise any relief or redress. If we believe the testimony, the Company was finally constrained to employ agents to go into the neighborhood where these injuries were committed, for the purpose of detecting the offenders in order that they might be brought to justice. In so doing the Company seem to have violated no rule of law or of honor.

It will not be expected that I should remark upon the conduct of the agents thus constituted, and in speaking of what the Company did and was justified in doing, I pass no judgment upon what is claimed to be an excuse for these alleged aggressions; this subject does not lie in my way, and it is not necessary that I should speak of it, for whether the company had met or failed to meet their obligations to these defendants or to any one else, their rights and their duties in reference to injuries done or seriously apprehended as described by the witnesses, remained the same. Those agents and now witnesses, declare that they entered upon the performance of the duties thus imposed upon them for a good purpose. They have described to you the perils of their task; whether those perils were necessarily incurred or not, or whether their conduct was such as to detract from the weight which would be otherwise due to their evidence, will be for you to determine. You are the sole judges of the credit due to the witnesses. If it is apparent from the evidence that their statements in court are unintentionally colored by a strong desire to build up a case for the prosecution, and that they have been insensibly influenced by any considerations personal to themselves, it will be your duty to estimate and ascertain its true value; but if you are convinced that any of these witnesses have been knowingly actuated by bad motives and have not endeavored to speak the truth and the whole truth, and if you are further convinced that any one of them, or of all the witnesses sworn on the stand, has intentionally stated what he knew to be untrue, or what he did not believe to be true, then it will

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be your duty to discard the whole of his evidence, according to the maxim—"falsus in unum falsus in omnibus."

I know not that there is any other rule of law or suggestion which I can present to your minds, that would afford you any aid in your investigations.—It may be that your minds are already convinced; indeed it would be somewhat singular, if, after hearing the facts discussed every day for a fortnight, you should not have quite matured your views of the evidence so as to enable you to dispose of the case without much delay. It is only in the event of a difference of opinion existing between you, that you will find the suggestions I have made as to your mode of procedure, of any value, they are not imperative upon you, but I have thought they might facilitate your action.

If under the influence of feelings thus guarded, and with minds thus directed, you shall arrive at the conclusion that the defendants are not guilty, no influence from any source should prevent your giving a unanimous expression to your convictions. On the other hand, if you are reasonably convinced that the defendants are guilty as charged, I am persuaded that no promptings of your hearts, no feelings of mere mercy, will mislead you, but that you will fearlessly come up to the performance of your duty, and declare (though it may be with saddened hearts) that the defendants are guilty.

And now the whole matter rests with you. Large interests are dependent on your verdict—but you should not let this fact oppress your minds, nor should you allow your feelings to be wrought up to a high degree of excitement by a consideration of the consequences that may flow from your verdict; these should not disturb you if you honestly discharge your duty. You cannot hope to satisfy all minds: public opinion, often right, but sometimes wrong, may question the correctness of your judgment and arraign your motives; but you must not let the consequences which may be likely to flow from your verdict, to the public, to yourselves, or to the defendants, to cloud the clear exercise of your judgment or warp your minds. It will be better for you, that you should sustain, as best you can, the clamor of interested individuals, or of that very respectable personage, called Public Opinion, whether for acquittal or conviction, than that you should, by disregarding the obligations of your oath, render it certain that for this act, you will hereafter meet an accusing conscience at the bar of God.

The defendants' counsel ask the court to charge the jury,

1st, That any acts performed, or statements made, by any one of the defendants, without the assistance, procurement or consent of others, are not evidence against any of the defendants, who were not parties to such acts and statements.

As to this point, I charge you in the affirmative, with this explanation, that if you find a conspiracy did exist between the defendants, as alleged, and that such acts or declarations appear from the evidence to have been within the scope, and in furtherance of it, all who were parties to the combination would be bound by them. The persons so acting or speaking would be deemed the agent of the others.

2d proposition—That the acts of obstructing and stoning the cars are not evidence sufficient to show a conspiracy between the prisoners to burn the depot, mentioned in the indictment.

As to this, I charge generally in the affirmative—with this further remark, that the evidence of such acts here admitted on the ground that it tended to raise a presumption of the character heretofore defined, when the question was raised. (Here the Judge referred to his former decision, and to a portion of his charge.)

3d proposition—That the question of conspiracy between the defendants is not material, unless it included the burning of the depot, mentioned in the indictment; and if the depot was destroyed in furtherance of any agreement or conspiracy, the agreement or conspiracy is merged in the higher offence of arson.

The court decline to charge as here requested, and refer to their charge (page 10.)

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VERDICT.

At a Session of the Circuit Court for the County of Wayne, held at the Court House in the city of Detroit, on the 25th day of September, in the year one thousand eight hundred and fifty-one.

Present, Hon. WARNER WING, Circuit Judge.

The People of the State of Michigan, vs. Ammi Filley, *et. al.* } Indicted for burning the Michigan Central Railroad Depot, in the night time, and for aiding and abetting before the fact.

The argument of Counsel in this cause being concluded, and the Court having charged the Jury, the Jury retire under the charge of officers duly sworn to attend them, to consult of their verdict, and coming into Court, being enquired thereof, say that they find the Defendants Ammi Filley, Lyman Champlin, Willard Champlin, Erastus Champlin, Richard Price, Eben Price, Orlando D. Williams, William Corwin, Ebenezer Farnham, Andrew J. Freeland, Erastus Smith, Aaron Mount, Guilty in manner and form as they stand charged in the Indictment in this cause, and the Defendants Arba N. Moulton, Jacob Tyrrell, Abner Grant, Ephraim A. Barrett, Grandison Filley, Lester Penfield, Miner T. Laycock, Benjamin F. Burnett, William S. Warner, Napoleon B. Lemn, Daniel Meyers, Eri Beebe, Russell Stone, William W. Lang, Henry Showers, John Palmer, John Ackerson, John Ladue, Benjamin F. Gleason, Hiram Hay, not guilty.

SE NTENCE.

At a session of the Circuit Court for the County of Wayne, held at the Court House in the City of Detroit, on the twenty-sixth day of September, in the year of Our Lord one thousand eight hundred and fifty one.

Present, Hon. WARNER WING, Circuit Judge.

The People of the State of Michigan, vs. Ammi Filley, *et. al.* } Indicted for burning the Michigan Central Railroad Depot in the night time, and for aiding and assisting before the fact.

The following defendants having been found guilty on the Indictment in this cause, to wit: Ammi Filley, Lyman Champlin, Willard Champlin, Erastus Champlin, Richard Price, Eben Price, Orlando D. Williams, William Corwin, Ebenezer Farnham, Andrew J. Freeland, Erastus Smith, Aaron Mount, and being now brought up to receive sentence. it is ordered and considered by the Court that all and every of said defendants above named, be and they are hereby sentenced to imprisonment in the State Prison of this State, at hard labor, for the term of years respectively hereinafter mentioned, from and including this date, that is to say, the said Ammi Filley for the term of ten years; the said Lyman Champlin for the term of five years; the said Willard Champlin for the term of five years. the said Erastus Champlin for the term of five years; the said Richard Price for the term of eight years; the said Eben Price for the term of eight years; the said Orlando D. Williams for the term of ten years; the said William Corwin for the term of eight years; the said Ebenezer Farnham for the term of eight years; the said Andrew J. Freeland for the term of eight years; the said Erastus Smith for term of five years; the said Aaron Mount for the term of eight years.

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STATE OF MICHIGAN, } ss.
COUNTY OF WAYNE, }

I, Jeremiah VanRensselaer, Clerk of the Circuit Court for the County of Wayne in said State, do hereby certify that the foregoing are true and correct copies of the Verdict and Sentence in the case of the People versus Abel F. Fitch, et. al.

In witness whereof I have hereunto affixed my hand, and affixed the seal of said Court, at Detroit, the 3rd day of October, A. D. 1851.

J, VAN RENSSELAER.

NOTE.—The following letters from Messrs. STUART and HOWARD will sufficiently account for the absence of the arguments of those gentlemen from this report:

DETROIT, 30th Sept., 1851.

GENTLEMEN:—In reply to your request that I should furnish for publication my argument, addressed to the Jury, against the prisoners, convicted of burning the Depot of the Central Railroad Company in this city. I beg to say, that although the notes of the argument (reported by Mr. Gillett) were promptly handed to me for revision, I have not yet found time even to *read* his manuscript. Immediately on closing, I was compelled to meet the Grand Jury, whose sitting occupied a week, and owing to my constant engagement in the trial in the Circuit Court, I was obliged to meet them without preparation—every hour of my time was employed in drawing some sixty bills of indictment presented at this term of Court. I am now compelled to proceed at once with the trials, and it is therefore quite impossible for me to accomplish the task of writing out, or even correcting the manuscript of my argument, in season to meet your wishes. Moreover, I beg to add, that so far as any useful purpose is sought, in the publication of the arguments of the counsel, nothing would be gained, by adding my remarks to the more able and conclusive arguments of my learned associates for the Prosecution, which occupy and cover the whole ground, and which your work will contain. In either of those speeches, the case of the Prosecution is enforced with greater ability, and more clearly than it was in my power to present it. I cannot doubt, that an attentive perusal of those arguments will carry conviction to the mind of every reader, and fully justify the verdict of guilty, pronounced upon the misguided and unfortunate men on trial.

I remain, gent.,
With respect,
Your ob't serv't,
DAVID STUART.

DETROIE, Sept. 30th, 1851.

GENT.:—In reply to your request, that I would furnish a copy of my argument in the late trial, for your forthcoming book, I would say, that Mr. Leland, who reported it phonographically, was too much occupied to write it out until within three or four days. Since I received the notes, poor health and pressing business have thus far prevented me from even reading it, much less correcting it for the Press. As I am obliged to leave town, I do not see as I can furnish the manuscript under a week or ten days. As it is desired that your report should go to press as soon as possible, I trust that this will sufficiently account fer its not appearing with the others. If the argument in question should be deemed of sufficient importance, it may hereafter appear in pamphlet form.

Yours very truly,
WM. A. HOWARD.

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Entered according to act of Congress, the 18th day of September, A. D. 1851, by

EDWIN A. WALES, ESQ.

In the Office of the Clerk of the District Court for the District of Michigan.

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APPENDIX.

INDICTMENT.

STATE OF MICHIGAN, } ss
WAYNE COUNTY, }

The Wayne County Court as yet in and of the Term of April, A. D. eighteen hundred and fifty-one, Wayne County, ss.

The Grand Jurors of the People of the State of Michigan, enquiring in and for the body of the County of Wayne aforesaid, upon their oath present that George Washington Gay, William Van Sickle and Erastus Smith, late of said county, and Abel F. Fitch, Ammi Filley, Arba N. Moulton, Jacob Tyrrell, Grant, (whose christian name is unknown to the Jurors aforesaid,) Nathan Credit, Ephrain A. Barrett, Lyman Champlin, Willard Champlin, Erastus Champlin, Hiram Hay, Aaron Mount, Grandison Filley, Lester Pennfield, Richard Price, Eben Price, Minor T. Laycock, Orlando D. Williams, Benjamin F. Burnett, William Corwin, Ebenezer Farnham, William Warner, Napoleon B. Lemm, Alonzo Holmes, Daniel Myers, Andrew J. Freeland, Harry Hocolm, Eri Beebe, William Gunn, John W. Welch, Welcom Hill, Russel Stone, William W. Lang, Harvey Wakeman, Henry Showers, John Palmer, Seba Corwin, John Ackerson, Christy Blackburn, John A. Lockwood, John La Due, John Can, David Loucks, Benjamin F. Gleeson, Mills Barber, Jerome Gould, and James R. Champlin, late of the County of Jackson, in said State, on the eighteenth day of November, in the year of our Lord eighteen hundred and fifty, at about the hour of eleven in the night time of the same day, and year last aforesaid, with force and arms at the City of Detroit, in said Wayne County, wilfully and maliciously did burn a certain Railroad Depot there situate, of great value, to wit: of the value of one hundred thousand dollars, then and there the property of and then and there used, occupied and possessed by the Michigan Central Railroad Company, a body politic and corporate, incorporated under and by virtue of an act of the Legislature of said State, entitled an act to authorize the sale of the Central Railroad, and to incorporate the Michigan Central Railroad Company, approved March twenty-eighth, in the year of our Lord eighteen hundred and forty-six, to the great damage of the said Michigan Central Railroad Company, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

And the Jurors aforesaid, upon their oath aforesaid, do further present that George Washington Gay, late of the City of Detroit, in said County of Wayne, on the eighteenth day of November, in the year of our Lord eighteen hundred and fifty, at about the hour of eleven of the clock in the night time of the same day and year last aforesaid, with force and arms at the city and county last aforesaid, wilfully and maliciously did burn a certain railroad depot of great value, to wit: of the value of one hundred thousand dollars, there situate, then and there the property of and then and there used, occupied and possessed by the Michigan Central Railroad Company, a body politic and corporate, incorporated under and by virtue of an act of the Legislature of said State, entitled an act to authorize the sale of the Central Railroad and to incorporate the Michigan Central Railroad Company, approved March twenty-eighth, in the year of our Lord eighteen hundred and forty-six, to the great damage of the said Michigan Central Railroad Company, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

And the Jurors aforesaid, upon their oath aforesaid, do further present that William Van Sickle and Erastus Smith, late of said Wayne county, and Abel F. Fitch, Ammi Filley, Arba N. Moulton, Jacob Tyrrell, —— Grant, (whose christian name is unknown to the Jurors aforesaid,) Nathan Credit, Ephraim A. Barrett, Lyman Champlin, Erastus Champlin, Hiram Hay, Aaron Mount, Grandison Filley, Lester Pennfield, Richard Price, Eben. Price, Minor T. Laycock, Orlando D. Williams, Benjamin F. Burnett, William Corwin, Ebenezer Farnham, William Warner, Napoleon B. Lemm, Alonzo Holmes, Daniel Myers, Andrew J. Freeland, Harry Hocolm, Eri Beebe, William Gunn, John W. Welch, Welcom Hill, Russel Stone, William W Lang, Harvey Wakeman, Henry Showers, John Palmer, Seba Corwin, John Ackerson, Christy Blackburn, John A. Lockwood, John La Due, John Can, David Loucks, Benjamin F. Gleeson, Mills Barber, Jerome Gould and James R. Champlin, late of the county of Jackson aforesaid, before the said wilful and malicious burning of said railroad depot was committed in form last aforesaid, to wit: on the said eighteenth day of November, in the year of our Lord eigeteen hundred and fifty, at the county last aforesaid, did feloniously and maliciously counsel, hire, incite, advise and procure him, the said George Washington Gay, the said wilful and malicious burning aforesaid of the said railroad depot, in manner and form last aforesaid, to do and commit against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan. And the Jurors aforesaid, upon their oath aforesaid, do further present that William Van Sickle and Erastus Smith, late of said Wayne county, and Abel F. Fitch, Ammi Filley, Arba N. Moulton, Jacob Tyrrell, Grant, (whose christian name is unknown to the Jurors aforesaid,) Nathan Credit, Ephraim A. Barrett, Lyman Champlin, Willard Champlin, Erastus

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Champlin, Hiram Hay, Aaron Mount. Grandison Filley, Lester Pennfield, Richard Price, Eben Price, Minor T. Laycock, Orlando D. Williams, Benjamin F Burnett, William Corwin, Ebenezer Farnham, William Warner, Napoleon B. Lemm, Alonzo Holmes, Daniel Myers, Andrew J. Freeland, Harry Hocolm, Eri Beebe, William Gunn, John W. Welch, Welcom Hill, Russel Stone, William W. Lang, Harvey Wakeman, Henry Showers, John Palmer, Seba Corwin, John Ackerson, Christy Blackburn, John A. Lockwood, John La Due, John Can, David Loucks, Benjamin F. Gleeson, Mills Barber, Jerome Gould, and James R. Champlin, late of the County of Jackson aforesaid, on the twentieth day of November, in the year of our Lord eighteen hundred and fifty, well knowing the said George Washington Gay to have done and committed the said wilful and malicious burning of said Railroad Depot in form in the second count of this indictment aforesaid, afterward, to wit: on the day and year last aforesaid, at the city of Detroit, in said county of Wayne, him the said George Washington Gay, did then and there feloniously receive, harbour and maintain, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

STUART,
Pr. Att'y.

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CERTIFICATE OF JURORS.

The undersigned, Jurors empanneled to try the case of the People, vs. Abel F. Fitch and others, take pleasure in saying that they were furnished with copies of the foregoing Report of the Evidence, as the same issued from the press, and cheerfully certify the same to be substantially correct; and say further, that said Report was constantly referred to and relied upon both by the Court and Counsel, during the progress of the arguments, and governed the Jury in making up their verdict.

DETROIT, Oct. 3d, 1851.

R. C. SMITH, Foreman,	STEPHEN FOWLER,
B. WIGHT,	SILAS A. BAGG,
A. C. McGRAW,	LEVI COOK,
A. McFARLANE,	JOHN ROBERTS,
HORACE HALLOCK.	RALPH PHELPS,
AMOS CHAFFEE,	ICHABOD GOODRICH.

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